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REPORTS

Francis O F *Hargrave*

CASES

Decreed in the
High Court of Chancery,
During the Time

Sir Heneage Finch,

Afterwards

Earl of *Nottingham*, was Lord Chancellor.

In many of which Decrees he was assisted
by some of the Judges of the COMMON LAW,

All which Cases are truly stated upon the Pleadings,
and the Arguments on each Side clearly reported; together with
the Opinions of those Judges, who sat as Assistants to the Chan-
cellor before he pronounced his Decrees.

To which are added marginal Notes, shewing where those Decrees
are founded on the Civil Law, and agree therewith.

*None of these Cases ever printed before, and all of them carefully
collected by a Gentleman who attended the said Court, and was
himself of Counsel in the said Cases.*

With proper Tables; one of the Names of the Cases, the other
of the principal Matters therein contained.

In the SAVOY:

Printed by E. and R. NUTT, and R. GOSLING, (Assigns of *E. Sayer*, Esq;) for **R. Gosling** at the *Middle Temple Gate*; **W. Mears** at the *Lamb without Temple Bar*, and **J. Hooke** at the *Flower de Luce* over against *St. Dunstan's Church* in *Fleet-Street*. MDCCXXV.



THE PREFACE.

THE Manuscript, from which the following Cases were printed, is in the Hands of the Publisher of this Report; and both the Writing and the Cases shew, that the Person, by whom they were collected, was a Man of Years and Experience; but that which adds to their Value is, that the Decrees were all made by that excellent Lord Chancellor the Earl of Nottingham, who was a Person of sound Judgment, and always reasoned with Eloquence and Exactness; of whom the late Bishop of Salisbury hath given this noble Character, (viz.) That he was a Man of Probity, and well versed in the Laws, an Incorrupt Judge, and in his own Court could resist the strongest Application even from the King himself.

If the Seat of Judicature in a Supreme Court of Equity could always be filled as it was then, and is now *, we should not have so much Reason to boast of Trials by Juries, as a Happiness peculiar to this Nation; because the Decree of a single Person so qualified, might be of more Force to bind our Properties, than the Verdict of 12 Ordinary Jurymen.

And since the Rights of the greatest Part of the Christian World have always been determined without Juries, I think it may not be improper in this Place to mention how the Law now stands amongst us as to such Trials.

And first I shall mention Grand Juries, who are generally Men of some Figure and Quality, and as such, their Presence at the Assises and Sessions may add more Solemnity to those Meetings; but their chief Business is to find Indictments, which is usually done upon the least Proof of the Fact on one Side; for they being (as they are called) an Inquest for the King, therefore they are to hear no Evidence against him, tho' the King, in

* By Peter Lord King, to whom the Custody of the Great Seal of Great Britain was delivered by the King on June 1, 1725.

whose Name Prosecutions of this Nature are made, is no otherwise concerned in them, but to see Justice done to the People.

But it may be difficult to apprehend how Justice can be done by hearing the Evidence on one Side; especially, if that wise Saying of the Moralist is true; ff. Qui aliquid statuerit parte inaudita altera, licet æquum statuerit, non æquus est Judex.

'Tis true, this Jury may happen to be in the Right, by putting accused Persons on their Trials; but if they should be acquitted by the Petty Jury upon hearing the Witnesses on both Sides, then it seems plain that they were wrongfully accused to the Grand Jury, and 'tis certainly an Injury to put innocent Persons on their Trials.

In other criminal Cases, Trials are frequently had without a Grand Jury, and that is upon Informations in the Crown-Office, which are never filed without Leave of the Court, for the Defendants to shew Cause why they should not be filed; and this seems to be a more equitable Method of Prosecution, because there can be no Proceedings against the Defendants, without being heard or wilfully declining it.

As to Petty Juries, the fairest Way of Trial seems to be by those who are specially chosen, because in such Case the Under-Sheriff (who is commonly an Attorney) is not the returning Officer; for he only attends an Officer of the Court with the Freeholders Book, and there both the contending Parties, or their Attornies, except against whom they please, till both are agreed in a certain Number to be returned of the Jury.

But even in this Case there are many Inconveniences, for the Persons thus returned being some of the principal Men of the County, are under no Obligation to attend at the Assises, and therefore it often happens that a few of them only appear, and then if the Under-Sheriff hath an effectual Cause to favour either Side, he hath his Talesmen ready in Court, but improperly so called, because they are not such, as in the principal Panel either in Estate or Education; and by this Means one of the Parties may lose the Benefit of his Challenges, because the Talesmen may be all Strangers to him, and therefore impossible to know whom to challenge.

And lastly, as to a Common Jury returned by the Under-Sheriff, (who in that Respect hath a great Influence over our
Lives

Lives and Properties) they are frequently twelve Men ignorant both of the Law and Fact, tho' sometimes they take upon themselves to be Judges of both, and give their Verdict accordingly; and if so, I know no Remedy, but that in Civil Cases the Court may grant a new Trial upon the Certificate of the Judge who tried the Cause, but this is at the great Expence of the Suitor, and Justice is delayed till the same Issue is tried again.

But admitting all the Jury to be Men of Probity and Understanding, it seems hard that they must all fast till they are all agreed in one Verdict; because the Frailties of human Nature requiring frequent and moderate Refreshments, it may happen, that the greater Number of them may be in the Right; but not being able to bear long Fasting, may by that Means be brought over to the Opinion of one or two who are in the Wrong; and if that should be the Case, then a good Conscience is compelled to yield to a bad Constitution.

But amongst many other Inconveniences of these Trials, I shall mention but one more, and that is, they do not make an End of the Cause; for there are so many Forms and intricate Circumstances attending these Proceedings, that after the Verdict is obtained, 'tis usual to set aside the Judgment for some Fault, either in misawarding the Process, or misreturning the Venire facias, Habeas Corpora, or Jurata, and sometimes by Mistrials in improper Counties, to the infinite Trouble and Charge of the Suitor, and in manifest Delay of Justice; but there is nothing of this Nature where the Decree is made by a single Person.

Two of the best Reasons for Trials by Juries are, that they have been approved for many Ages by our Ancestors, and that there is not so much Danger of bribing twelve Men as there is of one.

I must admit that these Trials are antient; but if such Inconveniences, as I have mentioned, were from the Beginning, the Rule is they cannot be established by Time; and if a good Reason may be drawn from Antiquity for the Support of such Trials; the like Reason may be suggested for Decrees of a single Person; for there were Chancellors in the Reigns of our Saxon Kings; and there are fewer Instances in our Histories of bribing this great Officer, than of corrupting Common Juries, tho' from the Reign of H. 2. when the famous Becket was Lord Chancellor, down to the Reign of H. 8. this Office was executed by Ecclesiasticks.

'Tis

'Tis true, many Decrees of Lord Chancellors have been reversed upon Appeals to a superior Court, but never for any Reason like that, for which a Verdict was set aside which was given by a North-Country Jury, by flipping up a Sixpence, if Cross for the Plaintiff, if Pile for the Defendant.

But tho' our Saxon Kings had their Chancellors, as hath been already mentioned, it may be difficult to determine in what their Office did consist; there are some whimsical Opinions, that it consisted in delivering the King's Mind to the House of Peers, and theirs reciprocally to the King; and therefore the Chancellor is called the Speaker of that House.

Some are of Opinion, that his Office consisted at first in cancelling unjust Laws, and therefore he is called Cancellarius: Now if Moderating the Rigour of the Common Law, is meant by cancelling unjust Laws, then his Office was originally what it is at this Day; and certainly 'tis a noble Undertaking for a Man of a superior Genius to reduce the Law to Reason by an equitable Construction, and to determine the Properties of the People by the Principles of political Wisdom, founded chiefly on the Civil Law, which is the Law of Nations, of which the Reader will find many Instances in the following Reports, and likewise many marginal Notes, shewing wherein the Decrees of this excellent Chancellor concur with that Law, both in Reason and good Sense.

W. N.elson

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In *Michaelmas Term, Ann. 25*
Car. 2. 1673, in Chancery,
Sir Heneage Finch Lord Keeper
of the Great Seal.

Luke Cook *and* Susan *his Wife, who was the Widow*
of William New, Plaintiffs.

Eleanor New, *Executrix of William New her late*
Husband, deceased, Defendants.

THE Plaintiff *Susan Cook*, after the Death of her first Husband *William New*, did, in Kindness to their Son *William New*, give him a Bond to pay him 100 *l.* when he came to the Age of 21 Years, and some Time afterwards she married the Plaintiff *Luke Cook*, and maintained her Son *William New* several Years after the said Marriage, who in the Year 1666 married the Defendant *Eleanor*, and by his last Will made her Executrix and went beyond Sea, and there died; afterwards she as Executrix put this Bond in Suit and endeavoured to recover the Penalty, and thereupon the Plaintiffs exhibited a Bill in Equity to be relieved, and to discover by what Authority the Bond was put in Suit.

The Money was brought into Court in Order that the Plaintiffs might have an *Injunction*, and afterwards upon hearing the Cause it appearing that the Plaintiffs had paid several Sums of Money, amounting in all to 50 *l.* upon the Account, and for the Use of the said *William New*, they prayed that the 100 *l.* might not be delivered out of Court to the Defendant, as was pressed by her Counsel, but to the Plaintiffs themselves, they giving Security, such as the Master should approve, to pay what should appear to be due for Principal and Interest on the said Bond, and thereupon Satisfaction to be acknowledged on Record on a Judgment

ment, which the Defendant had obtained in the said Bond, and that it might be delivered up to be cancelled, which was decreed accordingly.

William Hall, *Plaintiff*.

Robert Yates, *an Infant*, by John Dowers *his Guardian*, and Mary Yates, *an Infant*, by John Gale *her Guardian*, and Thomas Carr, *Defendants*.

THE Plaintiff's late Wife *Jane* was formerly the Widow of *Robert Yates*, who by his last Will devised the Lands in the Bill mentioned to the Defendants *Robert* and *Mary*, and likewise a Legacy of 40 *l.* to the said *Mary*, and if she die without Issue, then the same to be to the said *Robert*: The Plaintiff in Right of his Wife, who was Mother to the Infants *Robert* and *Mary*, entered on the Real Estate, and possessed himself of the personal Estate of *Robert Yates* the Testator, and paid his Debts and Legacies more than the Money in the Inventory did amount unto (the 40 *l.* being deducted) and maintained the Infants with Diet, Washing, Lodging and Schooling for Seven Years, and he likewise paid 5 *l.* to one *Carr*, for and in Behalf of the said *Robert* the Infant, and disbursed more Money than the Profits of the Lands and the Interest of the 40 *l.* would repay, and all for *Necessaries* for the said Infants, who now by their Guardians had entered on the said Lands, and demanded an Account of the Plaintiff, without making him just Allowances, tho' he offered to account for the Mesne Profits of the Lands, and for the Interest of the 40 *l.* so as he might be allowed what

* By the civil Law the Education of an Infant comprehends his Diet, Clothes, Lodging and Schooling, and after the Death of the Father, then the Mother is intrusted with the Education tho' she is not Guardian, unless there is some particular Reason to deprive her of it; but if she marry again she forfeits the Education of her Children by the first Husband. *Dom. 1 Vol. 270.* But the Guardianship may be committed to the Father in Law. *Dom. 1 Vol 283.*

was reasonable for the * Education and Maintenance of the said Infants, and for all Money disbursed by him upon their Account, and for Taxes and Assessments during the said Seven Years, and to pay to the Defendant what should appear to be due to them upon a fair Account as the Court should direct, the Plaintiff being saved harmless by the Decree of the Court for so doing, which was decreed accordingly, and the Plaintiff to be indemnified from all Claims and Demands of the said Infants *Robert* and *Mary*, touching the real and personal Estate of the said *Robert* the Testator, which came to their Hands.

And that *John Gale* the Guardian give Security to pay the said 40 *l.* with Interest to the Infants according to their said Father's Will.

John Bryan, *Plaintiff.*

Richard Rent and Elizabeth his Wife, *Administratrix* of Henry Darrell her late Husband, and Sir John Newton, *Baronet, Defendants.*

And

Between the said Richard Rent and Elizabeth his Wife, *Plaintiffs.*

John Bryan and others, *Defendants.*

Henry Darrell, the first Husband of the Plaintiff Elizabeth Rent, being possessed of a Lease of the Premises in the Bill mentioned, and being indebted to one Ferrers, in the Sum of 303 *l.* by Bond and Judgment, he sued out Execution upon the said Judgment, and by Virtue thereof the Sheriff sold the said Term and Estate for 303 *l.* to one W. R. who afterwards sold the same to the Plaintiff John Bryan for 210 *l.* and now prior Incumbrances being pretended, the Plaintiff Bryan offered, that in Case such Incumbrances prove to be real, and that the Defendant would account for the Mesne Profits, and so as he might receive the Rents then in the Tenant's Hands, and enjoy the Lands during the Residue of the Term, that in such Case he would discharge those Incumbrances.

A Trial at Law directed whether a Judgment was satisfied.

The Defendant insisted that Ferrers's Judgment was satisfied, and that the Plaintiff, on Pretence of former Debts due to him from Darrell, and that he had been bound and engaged in several Debts for him, the said Elizabeth his Widow, before she married the Defendant Richard Rent, had assigned over a Mortgage to the Plaintiff for 710 *l.* for his Security, he engaging at the same Time to discharge all the said Darrell's Debts, and therefore that the Plaintiff ought to pay the Debt now in Question, if it was not already satisfied; and for that Purpose the now Defendant Rent and his Wife had exhibited their cross Bill.

The Court directed a Trial at Law on this Issue, whether *Ferrers's* Debt was satisfied or not by the said *Darrell* in his Life-time, or by the said *Elizabeth*, whilst she was his Widow, or by any other Ways or Means, and after such Trial had, to resort to the Court upon the Equity reserved.

The Lady Bridget Astley and others, Coheirs of John Cook, Esq; deceased, Plaintiffs.

Andrew Fountaine, Esq; Defendant.

To discover a Trust, and to have a Conveyance and to discover where the Trustee had the Purchase-Money, who denied the Trust, and pleaded a Release as to the Discovery of the Money, and demurred, for that the Executors of the Purchaser were not made Parties. **T**HE Case suggested by the Bill (to which there was a Plea and Demurrer) that the said *John Cook* in the Year 1666 agreed to purchase the Manor of *B.* and other Lands in the County of *H.* of Sir *William Dudley, &c.* but took the Conveyance in the Defendant's Name in Trust for him and his Heirs, that the Money was raised out of *Cook's* Estate, and that the Trust of the said Manor and Lands, descended to the Plaintiffs, who ought to have a Reconveyance and an Account.

The Defendant by his Answer denied the Trust, and that he *bona fide* purchased the Premises, without any Trust for *Cook*, and that the Purchase-Money was paid by the Defendant, or his Order, and not by Mr. *Cook*, or his Order.

But as to any Discovery where the Defendant had the Purchase-Money, whether out of Mr. *Cook's* Estate, or what Accounts passed between them, he pleads a Release of all Demands concerning any Money received or disbursed by him for Mr. *Cook*, or for or concerning Mr. *Cook's* Estate, and that if any of the Purchase-Money was raised out of his Estate, it was intended to be released thereby.

And demurred, that if the Money was raised out of *Cook's* Estate, it was not sufficient to raise a Trust, or to discharge the Defendant from and against the Executors of *Cook*, for that they were not made Parties to this Suit, and that the Defendant ought not to discover the Profits until the Trust was proved.

To which the Court agreed, and therefore ordered the Plaintiffs to proceed to prove the Trust, and if upon hearing the Cause it shall appear that they have made any probable Proof thereof, then the Defendant to be examined upon Inter-

Interrogatories * concerning the Purchase-Money and the Discovery of the Profits, &c. and with these Directions that the Plea and Demurrer shall be allowed till the Hearing the Cause, but as to that Part of the Demurrer in not making the Executors of *Cook* Parties to this Suit it was over-ruled by the Court, but without Costs.

* By the civil Law the Interrogatories are to be reduced into Articles in Writing, and the Party is to answer them on

Oath; the Use of them is not only to prove the Fact, but tho' he deny or conceal the Truth, yet it may help to discover it upon Consequences which may be drawn from all the Answers, as if he denies Facts which are certain, or alledges Facts which are known to be false, or if he varies and wavers, &c. *Dom. 1 Vol. 460.*

Edward Bedell, *Esq; Plaintiff.*

Rebecca Bedell, *Relict and Administratrix of Gabriel Bedell, Defendant.*

JOHN *Bedell*, deceased, being seised in Fee of the Manors and Lands in the Bill mentioned, being of the yearly Value of 700 *l.* and being possessed of a personal Estate to the Value of 20000 *l.* did settle his Lands in *Huntingdonshire* upon himself and the Issue Male of his Body, Remainder to the Father of *Edward Bedell* the Plaintiff for Life; Remainder to the Plaintiff and to his Sons successively in Tail, with several Remainders over, and afterwards made his Will in Writing, and Sir *Geoffry Palmer* and *Gabriel Bedell* the Defendant's Husband, Executors, and after his Legacies were paid, he appointed that his said Executors should within two Years after his Decease lay out the Surplus of his personal Estate (which did amount to eighteen thousand seven hundred forty-one Pounds) in the Purchase of some Lands, &c. as near to the *Huntingdonshire* Estate as could be had, and to be settled to the same Uses as that was settled, and soon after died.

The Father of *Edward Bedell* the Plaintiff afterwards died in the Life-time of the said *John Bedell*, and thereupon the Estate in *Huntingdonshire* remained to the Plaintiff, according to the said Settlement, who likewise, by Virtue of the said Will became intitled to the Benefit of the personal Estate of the said *John Bedell*, and of such Lands as should be purchased there-with.

ting under his Hand obliged himself not to charge her for what the Servant had received, &c.

Bill by the Mortgagor against the Administratrix of the Mortgagee for an Account, she pleads that her Husband the Mortgagee gave Authority to the Servant of the Mortgagor to receive the Rents and Profits, &c. and that after the Death of her Husband she delivered up all the Accounts to the Mortgagor, who examining the same approved the Account, and by a Writing had recei-

That

That a Decree was obtained in this Court at the Instance of *Gabriel*, the late Husband of the Defendant *Rebecca Bedell*, (and whilst the Plaintiff *Edward Bedell* was beyond Sea) for purchasing Lands in *Norfolk*, and thereupon the Executors, with the said eighteen thousand seven hundred and forty-one Pounds personal Estate, and 7787 *l.* which they borrowed, and which remains a Debt upon that Estate, did purchase the Manors of *Woodrising*, *Carlwick*, and other the Manors and Lands in the County of *Norfolk*, the greatest Part whereof were settled on the Plaintiff *Edward Bedell*, pursuant to the Settlement of the Estate in *Huntingdonshire*, and the Residue was mortgaged for securing the Repayment of the said 7787 *l.* borrowed, as aforesaid.

Gabriel Bedell so contrived the Matter, that in passing this Decree he was trusted to manage the whole Estate in *Norfolk*, during the Minority of *Edward Bedell*, the now Plaintiff, and his being beyond Sea, and by Virtue thereof he did receive and dispose of the Rents and Profits of the *Norfolk* Estate, being of the yearly Value of 1600 *l.* and 400 *l.* per Annum, being the *Huntingdonshire* Estate, for the Space of five Years, during all which Time the Plaintiff never received of him above 500 *l.*

After the Plaintiff returned into *England*, and before any Account given by *Gabriel*, he died, possessed of a personal Estate to the Value of 6000 *l.* which he had raised out of the Rents and Profits of the said Lands in *Norfolk* and *Huntingdon*.

That after the Death of the said *Gabriel*, the Defendant *Rebecca*, his Widow and Administratrix, possessed her self thereof, and of all his Accounts concerning the Management of the said Estates, and of the Deeds and Evidences of the *Norfolk* Estate, of which *Gabriel* was possessed as Guardian to *Edward*, the now Plaintiff, by which Accounts (if some were produced) it would appear, that *Gabriel* was, at the Time of his Death, very much indebted to the Plaintiff, who about three Years since, or thereabouts, having attained his Age of 21 Years, desired the Defendant *Rebecca* to supply him with 500 *l.*

But she pretending that *Gabriel* her late Husband had paid 2000 *l.* towards discharging the said principal Debt and Interest of 7787 *l.* borrowed as aforesaid, to complete the Purchase-Money of the *Norfolk* Estate, and that he had expended more about the Management thereof than he had received out of the Profits, &c. as would appear by the said Accounts when produced, for which Purpose she desired some Time, and that if the Plaintiff had Occasion for 500 *l.* she offered to supply him with that Sum upon a Mortgage of some Part of the *Norfolk* Estate, which was to be as a Security to repay her what should appear to be due to her on her Accounts.

But that she having procured her Counsel to draw this Mortgage, it was made for the absolute Payment of 2500 without any Reference to the Agreement, and thereupon the Plaintiff refused to seal it, until she agreed, that upon Sealing it no Use should be made of it, but only as to the 500 *l.* until the Account was stated between them, and then it should be as a Security for what should appear due to her on that Account.

Thereupon the Plaintiff sealed the Mortgage, and has since paid the 500 *l.* and demanded an Account of the Profits of the *Norfolk* and *Huntingdon* Estates, according to her Agreement, but she refuses, and conceals the Account and denies the Agreement, and pretends the Mortgage was absolute for the Repayment of 2500 *l.* and has delivered Ejectments to the Tenants in Possession, and threatens to evict the Plaintiff, unless he will likewise pay 2000 *l.* more to her.

The Defendant *Rebecca Bedell*, as to so much of the Bill which demands an Account from her as Administratrix of her late Husband *Gabriel*, concerning the Profits of the *Norfolk* Estate, *Pleaded*, that her late Husband gave Authority to one *Ingleton* to receive the Rents and Profits thereof, which he did for several Years; and that she, after her Husband's Decease, delivered to the Plaintiff all his (the Husband's) Accounts, and all that he had received of the said *Ingleton* concerning the Premises, and that after the Plaintiff had fully perused and examined the same, he did, by a Writing duly executed by him and dated 24 *January* 1670, oblige himself, and promise not to charge the Defendant, as Administratrix to her Husband, with any Money received, or Profits made of any Part of the *Norfolk* Estate by the said *Ingleton* his late Servant; and that the Plaintiff, upon Perusal of the said Accounts, being satisfied that 2000 *l.* was due to the Defendant, he desired the Defendant to lend him 500 *l.* more, and offered to secure the Repayment thereof to her; and also the 2000 *l.* with Interest by several Payments (*viz.*) by the Payment of 500 *l.* in the first Year, and afterwards by 400 *l.* yearly and every Year, until the whole 2500 *l.* should be paid, because the Plaintiff was only Tenant for Life of the said Estate, and therefore could not pay her the Whole at one Payment; all which the Defendant did condescend to accept.

And thereupon the Plaintiff, by Indenture dated 9 *July* 1671, demised the Lands in the Bill mentioned to the Defendant from the said 9 *July* 1671, for 99 Years, if he so long lived to secure the Repayment of the said 500 *l.* with Interest in *July* 1672, and 200 *l.* with Interest, on every *Michaelmas* and *Lady-day*, until the whole 2500 *l.* should be paid, and that the said Mortgage was *bona fide* made with an Intent to secure the Repayment of the said 2500 *l.* with Interest to the Defendant, without any Condition

Condition or Defeazance, other than as therein is contained, excepting only, that after the Execution of the same it was discourfured on the Plaintiff's Behalf, and agreed by the Defendant that the Plaintiff should be at Liberty to furcharge her with what he could make appear her Husband did actually receive, and not contained in the faid Accounts, all which should be deducted out of the Mortgage-Money, and that the Plaintiff had not given her any Surcharge beyond which he was charged; and that he had paid her at feveral Times 529 *l.* in Part of the faid Principal and Interest fecured by Mortgage, all which ſhe, this Defendant, pleaded in Bar to a general Account.

And by her Answer ſhe inſiſted that the Plaintiff agreed to the faid Mortgage before it was executed, and that the ſame was perufed by him, and ingroffed by his Direction, and that the Decree was obtained, and the Purchase made of the *Norfolk* Eſtate whiſt he was in *England*, and with the Approbation of him and his Friends, after it had been viewed by him and ſome of them, and that her Husband was importuned by him and them to receive the Profits, which was inconvenient to him, being then a Tradesman in *London*, and therefore he gave Authority to his Servant *Ingleton* to receive the ſame, and that there was due to this Defendant the Sum of 24 *l.* 15 *s.* 6 *d.* over and above the Money fecured by the faid Mortgage which ſhe paid to one *Sheldon* upon his aſſigning a Judgment to her which he had obtained againſt the Plaintiff, and precedent to the faid Mortgage, and that ſhe inſiſted, on the Forfeiture of the Mortgage, ſo far only as to recover what was juſtly due to her, and the rather, for that the ſame was determinable on his Life, and that if her Husband received the faid 400 *l.* out of the *Huntingdonſhire* Eſtate, the ſame was diſburſed by him to or by the Order of the Plaintiff, or of *Lewis Phillips* his Truſtee of that Eſtate, who had accounted for the ſame to the Plaintiff, and had his Diſcharge.

The Court allowed the Plea upon Debate, and diſmiſſed the Bill as to what was pleaded, with this Direction, that it ſhould be referred to a Maſter, &c. to look into the Proofs, and that if he found the Plaintiff had furcharged the Defendant with any actual Receipts of her late Husband, and not comprised in the ſeveral Books of Accounts now produced and proved, then the Defendant ſhould be at Liberty to diſcharge her ſelf before the faid Maſter, who is to make all juſt Allowances to her, and that ſhe is to produce the Books of Accounts, and that the Plaintiff on Oath is to produce Acquittances, Accounts and Receipts touching any Money paid or diſburſed by the Defendant's Husband, by the Order or for the Uſe of the Plaintiff, or the faid *Lewis Phillips*, which came to the Plaintiff's or his Agents Hands or Cuſtody, or which they have or can come by; and in Caſe

any Thing shall appear by the said Master's Report to be coming to the Plaintiff, then the same to be deducted out of the Mortgage-Money, and the Plaintiff to give Security at the next general Seal to pay so much of the 2500 *l.* as shall be due with Interest, or by that Time to give up the Possession, and procure the Tenants to attorn, otherwise the Injunction, &c. to be dissolved, and Costs to be considered.

Andrew Harding, *Plaintiff.*

John Hardrett and Anne his Wife, *Defendants.*

THE Bill was to redeem a Mortgage made by the Plaintiff to one *Dickenson*, who was Father to the first Husband of the now Defendant *Anne Hardrett*, and which came by Assignment to her said Husband, who made her Executrix and died; and in this Bill the Plaintiff suggested, that the Estate mortgaged was a Term of Years of some Houses from the City of *London*, leased by them for 45 Years, that the Money lent was 400 *l.* and that his Wife, having some Interest in the said Lease, consented that the same might be renewed, which was afterwards done for 81 Years, and assigned to the said *Dickenson*, who agreed to execute a Reconveyance thereof, &c.

Plea that the Defendants were Purchasers without Notice.

The Defendant *Anne* pleads, that she was a Purchaser and Legatee of the Premises, without any Notice of such Agreement; and that in Consideration of a Marriage to be had between her and the other Defendant *John Hardrett*, and his undertaking to pay her Debts, she by Deed dated 15 Feb. 1672, did grant and assign the original Lease and all her Estate in the Premises, to certain Persons in Trust, to permit the said *John Hardrett*, to receive the Rents and Profits thereof, &c. that the said Marriage did take Effect, and thereupon the Defendants claim the Premises as an absolute Estate, not having, before executing the said Deed, any Notice of a Promise or Agreement made by *Dickenson* to reconvey, &c.

The Court decreed, that it appearing the Plea was true, the Defendants were in Nature of Purchasers without Notice, and therefore this Plea was allowed, but that the Defendants should give the Plaintiff (at his Charge) a Copy of this Deed of Trust, if required.

Grace, Eleanor, Francis, Katharine Fitzjames, *Infants, by the Lady Margaret their Mother and Guardian, Plaintiffs.*

Thomas Fitzjames, *Esq;* Sarah Fitzjames, *Sir Henry Fitzjames, Giles Strangwaies, and John Sadler, Esq; Defendants.*

THE Case was, *ss. Lewis Fitzjames* the Grandfather of the Plaintiffs was in his Life-time seised in Fee of the Manors and Lands in the Bill mentioned, and in the Counties of *Dorset* and *Somerset*, and being so seised did (for a Provision Payment of for his younger Children) by Deed dated *Aug. 1. Anno 10 Car. 1.* grant the said Lands in *Somersetshire* to certain Trustees therein named, for the Term of 99 Years upon Trust to pay out of the Profits, &c. to the Defendant *Sir Henry Fitzjames* his Son, and to his three Daughters (the Defendant *Sarah* being one of the three) the Sum of 1000 *l.* apiece at their respective Ages, of 21 Years, or Days of Marriage, and 30 *l. per Annum* to each of them for their Maintenance in the mean Time, and after the said several Sums of 1000 *l.* apiece, were raised, that they the Trustees should pay the Overplus (if any) to the Heir at Law of the said *Lewis Fitzjames*, and to assign and surrender the Remainder of the said Term to such Heir, least it should be kept on Foot to prejudice the Inheritance of the said Lands; after the Death of the said *Lewis* the Reversion of the said Lands and the Equity of the said Lease (after the Trust discharged) descended to *Sir John Fitzjames* the Father of the Infants (now Plaintiffs) who in his Life-time discharged all the Portions and the Trust, excepting only the Sum of 200 *l.* or thereabouts, which still remained due to the Defendant *Sarah*, the remaining 800 *l.* being otherwise well secured to her.

leaving Issue 4 Daughters who exhibit their Bill against the Pawnee, and the Executors of the surviving Trustees to assign the Lease which was decreed, but not without Payment of the 700 *l.* *See Rec. in Cha. 375. & 1. Bro. Cha. Cas. 269.*

That *Sir John Fitzjames* (the Plaintiffs Father) for the better securing and settling his Lands in *Dorsetshire*, and also in *Somersetshire*, to him and his Heirs, did levy two Fines, and suffer common Recoveries thereof to bar the Estate-Tail, (in Case there was any such Estate) and to make himself Tenant in Fee-simple, and by Deed duly executed declared the Uses of the said Fines and Recoveries to be to him and his Heirs for ever, excepting such Part of his Lands in *Dorsetshire*, which were then

then in Jointure to his Wife, and afterwards (*viz.*) 21 June 1670, he died, leaving Issue the Plaintiffs, being Infants, his Daughters and Coheirs, and likewise Sisters and Heirs to *Margaret* another of his Daughters, who is since dead without Issue, which said Daughters and Heirs (the now Plaintiffs) have contracted with several Persons for the Sale of some Parcels of the said Lands comprised in the said Lease for 99 Years in Trust, as aforesaid, and have offered their Aunt, the Defendant *Sarah*, to pay her the Remainder of her Portion secured by the said Deed, so as it may be delivered up to them to enable them to proceed in the Sale.

But she, together with *Thomas Fitzjames*, another of the Defendants, do pretend that he hath a Title to the said Lands by Virtue of some Entail or Settlement.

The Trustees were all dead, and the Defendants *Strangwaies* and *Sadler* were the Executors of the two last Survivors of them, and the Bill was exhibited against all the said Defendants, that they must assign the said Deed of Trust to the Plaintiffs, upon paying what is due to *Sarah*, and that the other Defendants may discover and set forth their Title, &c.

The Defendant *Sarah* answers, that the said Deed of Trust was then in her Possession, being deposited with her by her said Brother Sir *John Fitzjames* (the Plaintiff's Father) for securing 500 *l.* which he borrowed of her, and 250 *l.* more, which remained unpaid of her Portion, and hopes she shall not be compelled to deliver up the Deed till the said Sums are paid; especially since *Thomas* the other Defendant claims a Title as Heir in Tail, &c. his elder Brother Sir *John* being dead without Issue Male, and leaving only Daughters the now Plaintiffs.

The Court decreed, that the Benefit of the said Lease and Trust ought to go to the Plaintiffs upon Payment of 700 *l.* to *Sarah*, for which the said Deed remains with her as a * Security; and that she and the other Defendant, who are Executors of the surviving Trustees, shall assign and convey the said Lease and all their Estate and Interest therein to the Plaintiffs, or to whom they shall appoint, discharged of all Incumbrances done by them, or by any claiming from, by, or under them, which said Lease is to attend the Inheritance, and to be left with the Register till the 700 *l.* is paid, and then to be delivered to the Plaintiffs, and that the Master shall direct and settle the Assignment thereof, if the Plaintiffs cannot agree, and that the other Defendants be indemnified.

* By the civil Law the Depositary cannot detain the Thing deposited in Compensation of what the Depositor owed to him. *Dom.* 1 Vol. 146.

Sir Thomas Hatton, Baronet, Plaintiff.

Sir Walter Long, Baronet, Defendant.

The Vendor entered into Articles with the Vendee to convey the Estate clear of all Incumbrances, and some were to be paid out of the Purchase-Money, and the Vendor entered into a Recognizance for the Performance on his Part, and thereupon 700 *l.* Part of the Purchase-Money, was paid, but by the Articles the Vendee had Liberty to be discharged of the Bargain if he gave Notice thereof before such a Time, and then the Vendor was to pay back the 700 *l.* The Vendee desired to be discharged, but the Vendor exhibited a Bill for specifick Performance of the Articles but it was decreed against him, and to repay the 700 *l.* with Interest, &c.

THE Plaintiff being seised in Fee of the Manor and Lands in the Bill mentioned, being of the yearly Value of 440 *l.* did, in the Year 1664, treat with the Defendant about the Sale thereof, and clearing all Incumbrances out of the Purchase-Money; and thereupon they entered into *Articles*, and the Plaintiff received 700 *l.* in Part of the Purchase-Money, and was to receive 6700 *l.* more on a certain Day appointed, and then the Plaintiff was to convey the Estate to the Defendant clear of all Incumbrances, but that if Sir *Walter* the Defendant should, upon View of the Lands, dislike the same, and give Notice thereof in Writing before the 29th Day of *September* (which was three Months before the whole Purchase-Money was to be paid) and that he desired to be discharged of his Bargain, that then the Plaintiff should repay the 700 *l.* with Interest, &c. upon the first Day of *December*, &c. and on the same Day in which the Articles were sealed the Plaintiff entered into a Recognizance of 4000 *l.* defeasanced on Performance of the Articles on his Part, and some other Statutes and Judgments were assigned by the Plaintiff to the Defendant for his Security, and which were given by the Plaintiff to other Persons, who were to be paid out of the Purchase-Money.

That the Defendant *Sir Walter Long*, upon View of the Lands was satisfied; but afterwards, upon some Pretence of Dislike, he gave Notice to the Plaintiff that he desired to be discharged of the Purchase, and refused to accept a Conveyance of the Lands, and to pay the Remainder of the Purchase-Money, and yet threatened to put the Recognizance in Suit, thereupon the Plaintiff exhibited this Bill for a specifick Performance of the Articles, and the Defendant having put in his Answer, the Cause was heard before the Lord Keeper *Bridgman* on the 20th of *July* 1671, who did not think fit to decree a Performance of the Articles in *Specie*, and indeed made no positive Decree, and it coming now to be heard before the Lord Keeper *Nottingham* upon a Bill of Revivor, against the Son and Executor of *Sir Walter Long*, who insisted by his Counsel that his Father had provided

vided the Purchase-Money according to the Agreement, but that the Plaintiff had not performed the Agreement on his Part, by not discharging Incumbrances, and not procuring several Persons who had Judgments and other Securities to assign the same to the Defendant, and to release their Interest, so that his Father could not have a good and free Estate according to the Articles thereof the Bargain breaks of, and the Plaintiff ought to have repaid the 700 *l.* and Interest at the Time limited by the Articles which he had not done, and that there was 9 Years Interest now due, and that pending this Suit the Plaintiff had offered to pay the Defendant 400 *l.* by Way of Composition to be discharged thereof.

Whereupon the Court decreed, that the Plaintiff should pay the Defendant 700 *l.* at *Midsummer* next with Interest from this Time, and then the Recognizance to be delivered up and vacated, or in Default of Payment that the Bill be dismissed, but without Costs.

Matthew Bluck, *Esq*; John Goodman, *Senior*, Thomas Rogers *and* Thomas Font, *Plaintiffs*.

Philip Elliot, *Clerk, Defendant*.

THE Plaintiffs Bill is for Payment of a *Modus* of 15 *s.* 4 *d.* *per Annum*, in Lieu of Tithes, &c.

Bill for a *Modus*, &c. the Defendant pleaded

a Verdict and Judgment obtained by him in an Action of Debt upon the Statute 2 *Ed. 6.* against the Defendant Rogers, for not setting forth Tithes, &c. and the Plea was allowed.

The Defendant, as to so much of the Bill as chargeth the Payment of a *Modus*, or any yearly Sum of Money, for, and in Lieu of Tithes, for any of the Lands in the Bill mentioned (except out of *H. Meadow*) or that seeketh Relief here against the Defendant, for or concerning the same, or against the Verdict obtained by the Defendant against the pretended *Modus*, or which seeketh Relief touching any *Record*, *Exemplification* or *Abstracts* concerning the Premises, for Plea saith, that the Defendant now is, and for twenty Years last past hath been *Rector* of the Parish and Church of *Hunsdon*, and duly instituted and inducted, &c. and that in *Michaelmas* Term Anno 12 Car. 2. an Action of Debt was brought by him as *Rector*, &c. against *Thomas Rogers*, concerning the Payment of Tithes in Kind upon the Statute 2 *E. 6.* for the Forfeiture given by that Statute for

for not setting out his Tithes, which said *Rogers* was then Tenant of Parcel of the Lands, whereof the Bill suggests the *Modus* to be paid; and the Cause coming on to a Trial, the then Lord *Willoughby*, who was Owner of the said Lands, endeavoured to support the pretended *Modus* now insisted on by the Plaintiff, and made all the Defence he could in Person both on the Behalf of himself and Tenants, and especially of his Tenant *Rogers*, against whom the said Action was brought; but yet a Verdict passed at the Assizes against the pretended *Modus*, on which Verdict Judgment is duly entered, which Verdict and Judgment the Defendant pleads in Bar of the Plaintiffs Demand by this Bill; and the Court allowed the Plea to be good.

Anne Downing, *Widow and Administratrix of John Downing, deceased, Plaintiff.*

Alice Kirby, *Widow, Defendant.*

Plea of the
Statute of
Limitation
not good.

THE Bill was to have Satisfaction for 220 *l.* paid by the Plaintiff's Husband, for the Use and by the Direction of the Defendant's Husband, as appears by a Note or Letter written by him to the Plaintiff's Husband, dated 23 *Novemb.* 1655, and charges the Defendant to set forth, whether the Note now insisted on to be given for securing the Money in Question be the proper Hand-Writing of her Husband, and farther charges her with *Assets* sufficient to pay, &c.

The Defendant pleaded the Statute 21 *Jac.* of Limitation of Actions. But *per Curiam* this Plea is not good, because the Bill charges a Discovery of the Note, and whether 'tis her Husband's Hand-Writing, and therefore ordered the Defendant to answer that Matter, and that the Plaintiff might proceed at Law on the Note as he shall be advised.

John Hole, *Plaintiff*.Christopher Harrison, *Defendant*; & econtra.

Robert Jones one of the Executors of *Thomas Diamond*, (who left *George Diamond*, his Son, an Orphan in *London*) having a considerable Sum of the Orphan's Money in his Hands, was admitted to keep the same upon Security, who prevailed on the Plaintiff *John Hole*, and the Defendant *Harrison*, and one *Hutchins* (since deceased) to enter into a Recognizance of 300 *l.* to Sir *Thomas Player*, then Chamberlain of *London*, conditioned to pay the Sum of 195 *l.* and Interest to *Diamond* the Orphan, and the said *Robert Jones* gave them a Counterbond of 600 *l.* to indemnify them against the said Recognizance, he being then a Merchant of good Credit in *London*; afterwards the Defendant *Harrison* alone was sued upon this Recognizance (tho' the Plaintiff *Hole* was then a publick Tradesman) and Judgment was obtained against him, and he and his Bail taken in Execution. Not long afterwards *Jones* (who was then beyond Sea) returned into *England*, and was arrested by *Harrison* on his Counterbond, and Judgment was obtained against him, and he was taken in Execution, and afterwards swore himself out of Prison upon the 10 *l.* Act, and *Hutchins* being since dead insolvent, the now Defendant *Harrison* exhibited a Bill in the Lord Mayor's Court against the now Plaintiff *Hole*, for a Moiety of the Money which he had been compelled to pay to the Chamberlain of *London*, together with Damages and Costs, which Cause was removed into this Court by *Certiorari*, where *Hole* sought to be discharged from paying any Part of the said Money; for that *Harrison* having taken a Counterbond of *Jones*, had relied on that Security which he had confirmed by charging him in Execution; and tho' *Hutchins* died insolvent, yet his Executor or Administrator ought to have been made a Party to this Suit.

The Court was of Opinion that there ought to be a Contribution between the Plaintiff and Defendant, and that both Parties should take their Remedy against the Executor of *Hutchins*, but that such Executor ought to have been made a Party to the Bill which was now ordered, and to bring on the Cause again.

Three Persons are bound in a Recognizance for another, one of them was sued, and paid the Money, who afterwards sued the principal Debtor upon the Counterbond, and had Judgment and took him in Execution, who was discharged upon the 10 *l.* Act, then he who paid the Money exhibited a Bill against the other Person who was bound with him to have Contribution; the third Man being dead insolvent, decreed that he should have Contribution, but that the Executor of him who died insolvent ought to be made a Party.

The

The Lady Anne Dethick, Widow, Plaintiff.

Sir John Banks, Baronet, Edward Rudge, and Benjamin Dethick, Executors of Sir John Dethick, Defendants.

Bill to be relieved against the Disposition of a personal Estate by a Freeman of London contrary to the Custom.

THE Complainant by her Bill suggests, that Sir *John Dethick*, her late Husband, being a Freeman of *London*, she, by the Custom thereof, ought to have a full third Part of his personal Estate, and that no voluntary Disposal made by her Husband on his Death-bed to any Child can defeat her of her full customary Part, but that such Dispositions are void; and thereupon this Bill was now brought to be relieved against two Dispositions made by her Husband the Testator, to two of the Defendants, out of an Adventure of the *East India* Stock, (*viz.*) 1000 *l.* and the Profits thereof to the Defendant *Benjamin Dethick* his Son, and 300 *l.* and the Profits thereof out of the same Stock to the Defendant *Rudge*, who had married one of the said Testator's Daughters, by Reason whereof the Plaintiff was much prejudiced in her Customary Part, and thereof prayed that both the said Dispositions might be set aside.

This Cause being heard by the *Lord Keeper*, assisted by two Judges, who, upon reading the Defendants Answer, and the Will, and some Proofs, were fully satisfied that the Manner of transferring the said Stock was sufficient to alter the Property thereof, and that there was not any Colour of Fraud or Practice in the Testator in assigning the several Sums of 1000 *l.* and 300 *l.* in Stock, as aforesaid, but that the same was done with great Care and Deliberation, and with a full and clear Understanding, and without any Surprise, tho' not long before his Death; and that it was not reasonable to suppose any Man would contrive a Fraud on his Death-bed, and therefore the Bill was dismissed, it chiefly complaining of Fraud in this Assignment to defeat the Plaintiff of her customary Part, and not praying any Directions for a Trial at Law concerning the Custom, which was admitted to be thus, *viz. That a Conveyance by Act executed in the Life-time and Health of the Party would be binding*, but this was only as to the Defendant *Rudge* concerning the 300 *l.* assigned to him, there being no Equity against him, because he claimed the said Sum upon a good and valuable Consideration, and might have recovered so much at Law out of the Testator's Estate.

But

But it being insisted by the Plaintiff's Counsel, that the Assignment of the 1000 *l.* Stock to *Benjamin* was in Breach of the Custom * of *London*, and the Defendant in his Answer having joined Issue thereupon that it was not any Breach thereof, the Lord Keeper proposed an Accommodation the Parties being so nearly related (*viz.*) that whereas the Complainant claimed a third Part of the said 1000 *l.* that she should have a Moiety of the third Part, to which the Complainant consenting, it was decreed accordingly.

* Which is that if a Freeman hath a Wife and no Children, half his personal Estate shall go to her, and he may dispose the

other half; if he hath a Wife and a Child, or Children, then one third Part goes to the Wife, another third Part to the Child or Children, and he may dispose the other third Part, and so much of the Will as is contrary to this Custom is void; and upon a Bill brought against the Executor, the Party will be relieved, and so he will if a Freeman settle or make over any Part of his personal Estate, with an Intention to defraud his Wife or Children of their Shares. 2 *Lev.* 130. 1 *Chanc. Rep.* 84.

Henry Davenport, *Esq;* and Adam Bates,
Plaintiffs.

John Bromley, *Esq;* and others, *Defendants.*

THE Plaintiff being seised in Fee of the Lands in the Bill mentioned being Copyhold, held of the Manor of *Prees*, of which the Bishop of, &c. is Lord within which Manor there is a certain Parcel of Freehold Land, containing about twelve Acres, which the Complainant suggested by his Bill to be intermixed and undivided, and which the Defendant had recovered at Law, as belonging to him; but inasmuch as the Metes and Bounds of the said Freehold Lands were destroyed and not to be discovered, and that he is willing to set out twelve Acres of his Copyhold Lands in Lieu thereof, so as he may be indemnified from a Forfeiture to the Lord of the said Manor, and that a Commission may issue for that Purpose, to set out the said twelve Acres, and Suits at Law avoided, this Bill was brought.

Bill for a Commission to set out the Boundaries of Lands denied.

But it appearing by the Defendant's Answer, that the Lands claimed by him are distinct, and an inclosed Piece of Ground, which he had recovered, called or known by the Name of *H.* and not intermixed with the Lands of the Complainant, as he pretended, and this appearing by the Deeds and Proofs read,

The Decree was, that the Plaintiff forthwith deliver to the Defendant the Possession of the Lands called *H.* containing twelve Acres little more or less, and that he enjoy the same

D

free

free from all Incumbrances done by the Plaintiff, or any claiming under him, and that he execute Conveyances accordingly to the Plaintiff, if he require it, and that he satisfy him for the Mesne Profits, from the Time of the Exemplification of the Verdict now produced, to be computed by the Master, but without Costs.

Thomas Edgerley, *Gent. Plaintiff.*

*S.C. Nov. 14. 1673.
Rep. case n. 12*

John Price, *Clerk*, Samuel Hickman, Mary Avis, Widow, John Hickman, George Avis and Elizabeth his Wife, and Elizabeth Warr, an Infant, by John Feary her *Gurrdian*, and Anne Lady Baltinglass, and William, *Bishop of Lincoln*, Defendants.

An Agreement for inclosing Lands which were exchanged, was confirmed by a Decree against several, whereof the Parson of the Parish was one, and he and his Successors bound as to the Tithes.

THE Bill was to have an Agreement performed for inclosing certain Lands and common Fields in *Waterstrafford*, in the County of *Bucks*, made between the Plaintiff, Lord of the Manor of *Waterstrafford*, and the Defendant *Price*, Rector of the Parish, and other the Defendants who were seised of certain Parcels of Lands there, which by Agreement were to be exchanged and inclosed, and were in Pursuance thereof accordingly surveyed, set out and inclosed, to the great Improvement thereof, and Benefit of the Defendants, and of the Church at the Plaintiff's Charge and the Agreement fully performed on his Part, as is more particularly set forth in the Bill.

The Defendants *Price* the Parson and *Hickman* confess the Agreement, and all other the Defendants (excepting those two) confess their Consent to the Allotments, and that it would be very advantageous to all Parties, and thereupon the Cause coming to be heard before the Lord Keeper *Finch*, he found upon what was said and read that the Agreement was good, and the Inclosure was for the Benefit of all Parties interested, but that *Price* the Parson, and the Lady *Baltinglass*, were the chief Persons who opposed the Establishing this Inclosure, he ordered them to attend together with the Plaintiff *Edgerly*, who was Lord of the Manor, and this was in Order to an Accommodation, who accordingly attending, and he satisfying them that the Agreement was beneficial to all Parties, and particularly to the Church, because the Plaintiff agreed to pay to *Price* and his Successors

*See post. 144.
Toth. 174.
But see contra 3
Cholmley v. the
Atty Gen. & D.
Blair in Dem.
Proc. Nov. 1768.
Thames v. Hill
Mr. J. Hill
much difficulty
with this latter
case, the pro-
secution has been
understand in favor
of it.*

Successors 60 *l. per Annum*, (besides the Lands allotted to him in Exchange) and to secure the same by quarterly Payments in Lieu of the Tithes, for the raising whereof the several Landholders in the said Parish, and their Heirs and Assigns were to pay to the Plaintiff his Heirs and Assigns, their respective Tithes from thenceforth growing due from their respective Lands.

And it appearing that *Hickman* alone dissented, and that the Infant, who answered by her Guardian, and the other Defendant *Avis*, who claimed an Estate for Life, ought to be bound by an Agreement, which was so much for the publick Good and Benefit of all Parties.

The Decree was, that the said Agreement, and the Inclosures made pursuant to it, stand ratified and confirmed, and that all Parties, their Heirs, Assigns and Successors, enjoy their respective Allotments in Severalty against each other, their Heirs, Assigns and Successors, that at *Christmas* next the Plaintiff should pay to *Price* the Parson 130 *l.* being the Arrears of the 60 *l. per Annum* from the Time of the Agreement, and to secure the Payment thereof for the Time to come, to him and his Successors, out of a sufficient Part of his Lands in that Parish, in such Manner as a Master shall approve, who is to direct Conveyances between all the said Parties if they cannot agree amongst themselves, and that the Landholders in that Parish their Heirs and Assigns (other than the Plaintiff and his Heirs and Assigns) do pay the Tithes of their respective Lands to the Plaintiff, his Heirs and Assigns, and thereupon to be acquitted against *Price* and his Successors for ever, which Payment is to go towards Satisfaction of the 60 *l. per Annum*.

And a perpetual Injunction was awarded for quieting the Possession of the Plaintiffs and Defendants, their Heirs and Assigns, and *Price* and his Successors, and all claiming from or under them in the quiet Possession of the said Allotments and Inclosures against each other their respective Heirs, and Assigns, and Successors of the said *Price*, &c.

Edward Keat, *Esq*; Edward Cooke, *Esq*; Sir John Elwes, Thomas Hawles, *Esq*; and Francis Munday, *Dr. in Divinity*, Plaintiffs.

Charles Foster, *Esq*; Robert Gough, *Esq*; Sir John Archer, Daniel Whitby, *Dr. in Divinity*, and Thomas Gunter, *Esq*; Defendants.

And

Between Charles Foster, Plaintiff,

Sir John Elwes, *Dr.* Munday, John Wildman, *Esq*; William Hussey, *Esq*; Thomas Hawles, *Esq*; Edward Keat, *Esq*; and John Tull, Defendants.

Bill to perform Articles of Agreement which were performed in Part, and a specifick Performance decreed for the Whole.

THE Parsonage of *H.* held of Dr. *Whitby*, Prebendary of, &c. Parcel of the Possessions of the Cathedral Church of *Salisbury*, and two other Parcels of Land, being Freehold, in the Parish of *H.* one of them being half a Yard-Land called *Guyetts*, and the other a Messuage with the Appurtenances and half a Yard-Land in the Tithing of *V.* and both in the Parish of *H.* were formerly the Estate of *Thomas Hussey*, *Esq*; deceased, Father of the Defendant *William Hussey*, who being possessed of the Residue of a Term for Years in the said Parsonage, taken in the Names of *Keat* and *Cook* his Trustees, and seised of the said Freehold Lands by a Conveyance from one *Hellier*, did, by his Will, appoint Sir *R. Mason* deceased, Sir *John Elwes*, Mr. *Hawles*, Dr. *Munday*, Executors in Trust, which said Executors borrowed 2000 *l.* of Sir *John Archer* at Interest upon an Assignment of the said Term for Years by *Keat* and *Cook*, at the Direction of the Executors, and afterwards exposed the said Lease and Freehold Lands to Sale for raising Money to discharge the said 2000 *l.* &c. and in Order thereunto they employed one Mr. *Loder* to treat with the Prebendary Dr. *Whitby*, for renewing the Lease for three Lives, who accordingly made an Agreement with him in Writing for that Purpose.

Afterwards Sir *John Elwes* and Dr. *Munday*, together with the Defendant *Wildman* (who was an Agent, and intrusted with the Management of Mr. *Hussey's* Estate) agreed with Mr. *Foster* by

by Articles in Writing, dated 4 *October* 1672, that Sir *John Elwes* and Dr. *Munday* should before the 20th Day of *November* then next following, cause a Surrender to be made of the old Lease, and procure a new Lease to be made before the 30th Day of the same Month, by Dr. *Whitby* to the Plaintiff for three Lives, in as ample Manner as the old Lease, excepting such Alterations as had been agreed on between the said Dr. *Whitby* and *Loder* on the Behalf of the Executors.

And that the said Sir *John Elwes* and Dr. *Munday* should, before the said 30th of *November*, make the Plaintiff Mr. *Foster* a good Estate in Fee-simple of the said Freehold Lands, in such Manner as Mr. *Foster's* Counsel should advise, in Consideration whereof he was to pay 3600 *l.* (*viz.*) to the Prebendary Dr. *Whitby* so much for his Fine, and the Residue to discharge Sir *John Archer's* Debt, and otherwise as was agreed on.

For the Performance whereof Mr. *Foster* exhibited his Bill here, the Trustees and Mr. *Wildman* opposing the Execution of the said Agreement, tho' Mr. *Foster* had done all on his Part, and had paid 2000 *l.* to Sir *John Archer*, and all the Interest, and had taken an Assignment of his Mortgage, dated *May* 3, 1673, and had paid the Prebendary's Fine, and all Arrears of Rent, and had a new Lease made to him by Dr. *Whitby*, pursuant to the said Agreement, and had since paid most of the remaining Purchase-Money, and was ready to pay the Rest upon a good Conveyance of the Inheritance of the Freehold Lands purchased of the said *Helier*, which was agreed to be conveyed to him as well as the Parsonage.

And the Effect of the Trustees Suit being to be relieved against the said Agreement, and to set aside the new Lease upon Pretence the same was obtained by Fraud, and to be let in to redeem the Mortgage made to Sir *John Archer*.

But the Agreement being under Hand and Seal, and fully proved, and no Fraud appearing, and so far executed before any Bill exhibited against Mr. *Foster*, who is ready to complete the same upon a good Assurance of the Lands.

It was decreed, that the said Agreement should be performed, and the Master to settle the Conveyance, and that *Keat*, *Cook*, *Elwes*, *Munday*, *Hawles*, *William Hussy* and *Wildman*, shall release all their Right, and Title, and Interest, in or to the said Parsonage and Freehold Lands in such Manner as the Master shall direct, and the Trustees forthwith to deliver Possession to Mr. *Foster*, giving Security to pay what shall appear to be due upon Account, which the Master is to compute, and then the Rents Arrear in the Tenants Hands, or otherwise to be paid to Mr. *Foster*.

Susan

Susan Ewes *and* William Reeve, *Plaintiffs*.

Edward Blackwall, *Esq;* *and* William Blackwall,
Defendants.

An Award
not perform-
ed within
the Time li-
mited for
the Perform-
ance thereof
was set aside.

THE Plaintiff *Reeve* being seised of the Manor and Lands in the Bill mentioned, being Part Freehold, and Part Copyhold, mortgaged the same to the Defendants, to be reconveyed by them to the Plaintiff and his Heirs upon Payment of some Money due to them.

Afterwards some Differences arising between the Plaintiffs and Defendants about the *Quantum* of those Sums, and there being Suits commenced by the Plaintiffs in Order for a new Redemption, a Reference was proposed, and about the Month of *June* 1672 it was agreed, that all Matters should be referred to Serjeant *Ellis* and Sir *John Churchill*, who on the 10th of the same Month made an Award in Writing, *ss.* that the Plaintiff *Reeve* should pay to the Defendant *Edward Blackwall* as due to him, the Sum of 6543 *l.* 13 *s.* and 9 *d.* and likewise the Sum of 3500 *l.* as due and owing to the other Defendant *John Blackwall*, and that if the Plaintiff *Reeve* should procure Bonds or Bills under Hand and Seal, by which the said *Edward Blackwall* stood bound to any Person or Persons for his own just Debts, which with Interest should amount to the Debts aforesaid, and the same Bonds and Bills be delivered up to the said *Edward* within five Weeks from the * Date of the said Award, that then the said Defendants should accept them in full Discharge of their Debts, and then to reconvey to the Plaintiff *Reeve* his Heirs and Assigns, all the Lands which were by him mortgaged to them, discharged of all Incumbrances done by them or any claiming under them, with all Deeds and Evidences concerning the same, and discharge all Bonds and other Securities whatsoever, which they have or had against the said *William Reeve*, or his Estate, but if the said *Reeve* should fail in the Performance of what was awarded, then the Defendants were to have the full Benefit of their Securities for the whole Money thereby stated to be due to them as aforesaid.

* which was
on the 10th
of *June* 1672.

That within the Time limited for Payment of the said Money, there was a great Quantity of Grass fit to be cut off the Estate, which was agreed the Defendant *Edward* should cause to be cut and made into Hay, and that if the Plaintiff *Reeve* performed the Award, and paid the Money and Charges for cutting the
Grass

Grafs and making it into Hay, then he should have it to his own Use.

Pursuant to this Award, and in Part of Performance thereof, the Plaintiff *Reeve* borrowed of the other Plaintiff *Susan Ewes*, the Sum of 700 *l.* and paid the same to the Defendant *Edward Blackwall*, by the Hands of *Henry Johnson*, Esq; before the 23d * Day of *July* following, and farther paid to him by the same Hand, the Sum of 6543 *l.* by delivering up several Bonds wherein the said *Edward* stood bound to several Persons for his own Debts; and thereupon the said *Edward* and the Plaintiff *Reeve* did convey the Lands in the Bill mentioned, or the greatest Part thereof, to the said *Henry Johnson* and his Heirs.

* which was more than five Weeks from the Date of the Award.

And in farther Pursuance of the said Award the Plaintiff *Reeve* did pay the Defendants, or one of them, in Money, or in Bonds, or Statutes, wherein the said *Edward* and *John Blackwall*, or one of them, were bound, the Sum of 2058 *l.* 15 *s.* 6 *d.* Part of the said 3500 *l.* appointed to be paid by the said Award to the said *Edward Blackwall* for the Debt of the other Defendant *John Blackwall*, which they have accepted, and the Plaintiff hath tender'd and offered to deliver up some other Bonds and Securities, wherein the said *Edward* stands bound for his own Debts, and as much as amounts to the Residue of the said Sum of 3500 *l.* and required the Defendant to accept the same, and that the said *John Blackwall* would surrender the Copyhold Lands to the Plaintiff *Susan Ewes* and her Heirs, and convey the said Freehold Lands to the Plaintiff and his Heirs discharged of all Incumbrances, and to perform the said Award *in Specie*, and account for the Value of the Hay, all which the Defendants refuse to do, because the Award was not performed within the Time limited to the Plaintiff *Reeve* for the Performance thereof.

The Court upon hearing this Cause dismissed the Bill as to the Hay, and decreed that the Money paid and accepted by Bonds or otherwise within the Time beforementioned, (*viz.*) from the Time the Award was made to the End of the Fortnight afterwards is well paid, and is to go towards the Satisfaction of the Debt due to *John Blackwall*, as well upon Bonds as upon Mortgage, so far as the same will reach; and that the Award in the Bill set forth not being performed by the Plaintiff within the Time, ought not to be conclusive and binding to the said *John Blackwall*, to cut off any Part of his just Debt, and therefore the said Award is to stand dissolved from that Time.

The Master is to compute what is due to *John Blackwall* for Principal and Interest by Bonds and Mortgage, beyond what has been already paid by Bonds or by Money, and that upon Payment

Payment thereof at a Time appointed by the Master, the Defendant shall reconvey and surrender the mortgaged Premises to the Plaintiff, or to whom he shall appoint, discharged of all Incumbrances made by them or either of them, or claiming under them as the Master shall appoint, and then to deliver up the Mortgages, and Bonds, and other Writings, and in Default of Payment then the Defendants to take the Benefit of their Securities, but the Injunction to continue till Default, &c.

William Gregg, Matthew Stileman, *Governors of the School of Tunbridge in Kent, and others, Plaintiffs.*

Michael Cotton, *and others, Defendants.*

Bill against
a Clerk of
the *Skinners*
Company, to
produce the
Company's
Books of Ac-
count, he
pleads, that
he was sworn
not to shew
or deliver
the said
was allow'd.

THE Bill is, that the Master, Warden and Company of *Skinners* in *London* may account for the Rents and Profits of several Messuages and Tenements in the Bill mentioned, and may discover and produce the Books of Account of what Rents and Fines they have received of and for the said Messuages, &c. and that the same may be applied towards Satisfaction of several Charities given by the Will of Sir *Thomas Smith*, deceased.

Books without the Consent of the Master and Wardens, &c. and the Plea

The Defendant *Cotton* being Clerk of the *Skinners* Company, pleads, that amongst several other Ordinances made by the said Company, it is ordered, that every Clerk, before he is admitted Clerk to the said Company, shall swear not to shew forth or deliver the Books of Account and Papers belonging to the said Company or Corporation, nor make any Copies thereof, without the Consent of the Master, Wardens and Commonalty of the said Company, which Oath the Defendant had taken, and therefore he being a Member and Clerk of the Company, demands Judgment of the Court, whether he shall make any other Answer.

The Court allowed this Plea of the Clerk, because he was under the Obligation of an Oath, and because the other Defendants might be compelled to produce the said Books and Papers.

Mary Blew, *Widow, Plaintiff.*

Thomas Baker *and Anne his Wife, Defendants.*

THE Bill is to have a *Legacy* of 400 *l.* given by *William Baker* (who was the first Husband of the Defendant *Anne*) by his last Will to *William Blew*, late the Husband of the Plaintiff, the said *Anne* being *Executrix* to the Testator, and the Plaintiff *Mary* being *Administratrix* to her late Husband, and likewise to discover *Assets*.

The Defendants confess *Assets*, but say they are not bound to pay this Legacy, because there is a * Clause in the Will of the said Testator, that if any Person, to whom he had given a Legacy, should refuse to pay to his Executrix what was justly due from them at his Death, either by Specialty or otherwise, then such Person was to have no Benefit by his said Will, and that *William Blew* and his Brother borrowed 1000 *l.* of the Testator *William Baker*, and entered into a Bond of 2400 *l.* to the said Testator, conditioned to pay unto him 120 *l.* per Annum during his (the Testator's) Life, and that the said Testator *William Baker* lived twelve Years after the Date of the said Bond, at whose Death there was due and owing to him 1500 *l.* on the said Bond, which was not paid in his Life-time, but only 300 *l.* Part thereof, as by his Books of Account it appears, so that there was 1200 *l.* due and unpaid at his Death.

Bill for the Payment of a Legacy, which was controlled by a subsequent Clause of the same Will.

* This is agreeable to the civil Law (viz.) the Testator hath Power to revoke a Legacy without any express Dispositions as if he disposes otherwise of the Thing bequeathed. Dom. 2 Vol. 193.

And it appearing this Bond was entered into upon the Testator's furnishing *William Blew* with a Sum of Money to put him to trade, which Trade he afterwards took from him, and possessed himself of all his Goods and Stock in Trade, to the Value of 1000 *l.* and of all his Books of Account, and Book-Debts, and other Papers and Writings belonging to the said Trade, and converted and disposed the same to his own Use, whereby the said Bond was satisfied, and *Baker* the Testator never afterwards demanded one Penny of *Blew*.

Therefore the Court referred it to a Master to examine how much of *Blew's* Estate came to *Baker's* Hands in his Life-time, and to report the same specially.

Anne Clent, Dorothy, William, Katharine Clent,
Theodosia Sutton, Arabella *and* Marshal Sutton,
Infants, by Henry Sutton *their Guardian*,
Plaintiffs.

Esther Bridges *and* Marshal Bridges, *Defendants*.

A Legacy
given, and
to be paid
at a certain
Time, if 'tis
accordingly
paid (as a
Bond given
by the Exe-
cutor for the
Money is in
Law a Pay-
ment) shall
not be sub-
ject to any
contingent
Clause in the
same Will.

THIS Cause being heard before the Lord *Shaftsburie* 26
Novemb. 24 *Car.* 2. appeared to be thus.

Jf. William Bridges, the Plaintiff's Grandfather, made his last
Will, dated 16 *May* 1668, and thereby bequeathed in these
Words following, (*viz*) *Item, I give to my two youngest Daugh-*
ters Esther and Margaret Bridges 600 l. apiece, to be paid them
by my Executors within six Months after my Decease; and then
after several other Devises in his said Will, there was another
Clause, by which he farther declared and devised in these
Words (*viz.*) *Item, I do hereby declare my Will and Meaning*
farther to be, that if either, or both my said Daughters, Est-
her and Margaret, shall happen to die before they accomplish
their Ages of 21 Years, I do hereby desire, and as far as in
Law in me lies, give and bequeath the Portion or Portions
hereby given to her or them so dying, to be equally shared and
divided between the Survivor of them and my Son Edward
Bridges, and all the Children of my Daughter Sutton by both
her Husbands as shall be then living, (which were the Plaintiffs)
and he made *Marshall Bridges* sole Executor, and on the 25th
of *May* in the same Year he died, and afterwards the Executor
proved the Will.

But the Estate of the Testator consisting in Debts due to him
upon Securities and otherwise, and in Stock, but little ready Mo-
ney, and the Executor being pressed by *Esther* and *Margaret*
to pay the 600 l. apiece so devised to them, he gave them Bonds
of 1200 l. apiece Penalty, which they accepted as Payment of
the Money, and gave Discharges under their Hands and Seals,
and the Executor duly paid them the Interest of their respective
Legacies of 600 l. apiece.

Margaret having attained the Age of twenty Years, and
eight Months, did, before her full Age or Marriage, make her
Will, by which she devised the greatest Part of her Portion to
her Relations, and made her Sister *Esther* Executrix and died,
being indebted at that Time in 82 l. and the Executrix having
expended 78 l. in her Funeral.

The Question was, to whom the said 600 *l.* did belong, the Plaintiffs claiming it to be divided amongst them, according to the latter * Clause of the Testator's Will, and the Defendant *Esther* * *viz.* By the Death of *Margaret* before she was of Age. claiming it by Virtue of the Will of her Sister *Margaret*.

The Court decreed, that the Executor *Marshall Bridges* should not be charged with the Payment of 600 *l.* because he had a Discharge and Release from the Legatee, and had given Security for Payment of that Sum, and therefore should not be charged as *Executor*, but that he should pay the Money due on that Bond which he had given to *Margaret* to her Sister *Esther*, who was her Executrix, and to *Edmond Bridges*, and to the Plaintiffs; excepting only 82 *l.* and 78 *l.* which she owed at her Death, and which had been spent at her Funeral.

But this Cause being reheard by the Lord Keeper *Nottingham*, assisted by Justice *Rainsford* and Justice *Wild*, they were all satisfied, that the Security given by the Executor, was both in Law and Equity a good Payment of the Money to all Intents, and that the Will having once taken its full Effect by the Payment of the 600 *l.* to *Margaret* at the Time appointed (*viz.*) at the End of six Months after the Death of the Testator, the Property of that 600 *l.* was so absolutely vested in her by that Payment, that it could be no longer subject to the latter contingent Clause in the said Will of her Father.

For * where a certain and determinate Time is appointed for * Where a the Payment of a Legacy, and afterwards a contingent Clause is Legacy is added touching the same Legacy, all the Words of the Will pure and simple, in must stand together, which can never be, unless the Contingency such Case happen within that Period of Time appointed for the Payment of whether it; for if it happens after the Time 'tis vain and idle, and cannot there is a certain Time control the Property of a personal Chattle, or of Money executed by Payment; and the Testator himself, in this Case, seems fixed for Payment of it or not, if the Legatory survives the Testator, and having thereby acquired a Right to the Legacy that transmits it to his Heirs or Executor, whether he die before or after the Time 'tis appointed to be paid by the Will. *Dom.* 2 Vol. 181.

And it would be harder to disable her to dispose by her Will what she might have spent or given away in her Life-time, and the last Decree allowed 180 *l.* of the Money to be well spent, whereas, in Strictness, either the whole is subject to the contingent Clause, or no Part of it.

Wherefore, upon the whole Matter, the Court saw no Reason why the Property of the Money once paid to *Margaret* in Manner as aforesaid, should remain subject to any Qualification or Contingency, or any Ground for the former Decree; but

the Money was well disposed by the Will of *Margaret*, and the former Orders discharged, and the Plaintiffs Bill absolutely dismissed.

Eleanor Burgh *and* Robert Burgh, *Plaintiffs*.

Henry Francis, *Son and Heir* of Henry Francis *deceased*, William Sherrer *and* Elizabeth *his Wife*, Edward Hayman, Richard Shoreditch, Richard Evans, Anthony Hatch, Edward Vernon, Richard Drake, Thomas Williams and John Hill, *and others*, *Defendants*.

Bill by the Executors of the Mortgagee to supply a defective Mortgage, and to be relieved against Judgments suffered by the Heir of the Mortgagor, decreed accordingly, and that it shall not be in the Power of the Heir to charge the Lands, by suffering Judgments against himself in Prejudice of such Equity.

THIS Bill was brought by the Executors of the Mortgagee against the Heir of the Mortgagor, to perfect a defective Deed of Mortgage by *Feoffment*, without Livery and Seisin, and to be relieved against certain Judgments confessed by the Defendant *Henry Francis*, and by *Sherrer* and his Wife, by Collusion to defeat the Plaintiffs.

decreed accordingly, and that it shall not be in the Power of the Heir to charge the Lands, by suffering Judgments against himself in Prejudice of such Equity.

The Defendants acknowledge by their Answers, that they had confessed several Judgments all in one Term, and most of them at the same Time, and to several Persons for considerable Sums of Money, which they set forth, but deny they were since the Bill exhibited, tho' they cannot tell when the Warrants of Attorney were sealed.

This Cause being heard by the Lord Keeper *Bridgman*, he directed the Matter to be examined before a Master, and more particularly whether the Bill was a new or an amended Bill, and when the Judgments were obtained, and when the Warrants of Attorney were dated and sealed, and whether the Judgments were confessed after the Bill, and after Notice of the Mortgage; and after the Master had made his Report, he would give his Opinion, &c. the Cause was reheard by the Lord *Shaftsbury*, and an Accommodation proposed, which took no Effect, and being now reheard by the Lord Keeper *Finch*, he decreed that the Plaintiffs should be relieved, and that the several Judgments ought not to incumber the mortgaged Premises, until the Mortgage-Money was all paid.

This Decree was not founded on the Manner of obtaining these Judgments, nor on the special Way by which they were endeavoured to charge the Lands, (*viz.*) by pleading that the Heir had nothing by Descent besides the Lands in Mortgage, nor upon the Priority of the *Teste* of the *Subpana*, which was before the *Teste* of the *Originals* upon which the Judgments were had, but it was founded on the Nature of the Case.

For the Debt due upon this Mortgage did originally charge the Land which the Debts by Bond did not, till they were reduced into Judgments; and altho' the Mortgage was defective in Point of Law for Want of *Livery*, yet Equity, which supplies that Defect, did still charge the Land, and it ought not to be in the Power of the Heir at Law to charge it, by acknowledging Judgments in Prejudice to such Equity; the rather, because in this Cause it appeared, that the Mortgagor had covenanted for him and his Heirs, to make any farther Assurance; so that when the Land descends upon the Heir charged with this Mortgage, he is in Nature of a Trustee for the Mortgagee till the Money is paid, and cannot incumber it; and tho' the Creditors had not any Notice of this Mortgage, yet they shall be bound in this Case, because they are not put in a worse Condition than they ought to be, (*viz.*) to be postponed to the Mortgage; and it appeared in Proof, that the Heir once offered to pay the Mortgage-Money, but upon Sight of the Defect of the Deed he refused, and presently acknowledged all those Judgments on Bonds, on Purpose to load the Land with Incumbrances, and in Effect to pay his Father's Debts with the Money due on the Mortgage.

Wherefore the Decree was, that the Defendant *Henry Francis* who was to be Heir at Law, shall convey to the Plaintiffs, or to such whom he shall appoint, a sufficient and perfect Estate of Inheritance in the Premises, in such Manner as the Master shall direct, subject to be redeemed upon the Payment of the Principal and Interest due on the former defective Deed, and the said Lands shall be held as mortgaged, and be quietly enjoyed against the Defendants, and all claiming under them since the Date of the former Mortgage; and that he, to whom the Redemption doth belong, may exhibit his Bill in convenient Time, or in Default thereof the Plaintiff may exhibit his Bill to foreclose.

And a perpetual Injunction was awarded to quiet the Plaintiff's Possession against all the said Defendants, and to stay all Proceedings at Law, but no *Costs* until Redemption, or the Plaintiff enforced to exhibit his Bill to foreclose, and then Costs to be allowed as in such Cases.

Thomas Coleman, *Plaintiff*.

Thomas Coleman *and* Quainborough *his Wife*;
Edward Coleman *by the said* Quainborough *his*
Mother and Guardian, and the Master, Fellows
and Scholars of Corpus Christi, alias Bennet Col-
lege in Cambridge, Defendants.

Bill for an
Annuity of
20 l. per Annu.
devised by
the Testator
whose Name
was Coleman
to any other
Coleman, who
should be fit
to be a Stu-
dent, and
reside in
such a Col-
lege in Cam-
bridge, &c.

THE Bill was brought by the Plaintiff as Student of the said College, and under the Degree of Master of Arts, against the said *Edward Coleman*, Son of *John Coleman*, Executor of *Edward Coleman* the Testator, and to whom, together with the now Defendant *Edward* (who survived his Father) the Lands and Tenements of the Testator were devised, and against the other Defendants, who claim some Estate or Interest therein, under the said *John* or *Edward* the Testator; and this was, to have an Annuity of 20 l. per Annum, given by the Will of *Edward* the Testator to the *Master and Fellows, &c. of that College* in Trust, towards the Maintenance of four Scholars, whereof two should come from the Free School in the City of *Norwich*, and two from *Westminster* School, (*viz.*) 5 l. apiece, till they were Batchelors of Arts, if resident so long in that College, except before that Time one or more, whose Surnames should be *Coleman* (and coming from any School) should be fit to be a Student, and reside in that College, then all the said Annuity should begin and be paid in that Year of his or their coming to him or them equally towards their Maintenance, until he or they were Master of Arts, or Fellow of any College; and if any should be in those Scholarships at the Time of the *Coleman's* coming, then the same should cease and be void, and should fall to the said *Coleman* or *Colemans*, and in this Will there was Power given to the *Master and Fellows* to distrain for this Annuity, if it was not paid, which it was not, and for several Years had not been paid, tho' the Plaintiff was qualified, as directed by the Will.

The Decree was, that it appearing the Lands were charged with this Annuity, the Defendants should account before a Master for the Rent, and the Arrears and Damages, and pay the same so far as the Profits will extend after all just Allowances and

and Deductions, and if they have any Surplus in their Hands after all just Allowances then they shall pay *full Costs*.

Margaret Cowpland, *Widow*, Mary, Katharine, Elizabeth, Frances, Anne, Martha Cowpland, Ralph Appleton, Anne Hicks, Robert Otterborn, and Mary his Wife, Robinson Otterborn, Martha Hurst, Swaites Thompson, and Thomasin his Wife, *Plaintiffs*.

Elizabeth Carter, *Widow*, *Defendant*.

THE Bill is to discover the personal Estate of one *Anne Hurst*, Widow and Executrix of *Robinson Hurst*, and that the Plaintiffs may have a Moiety thereof decreed to them, it being pretended by the Bill, that it was the *Intention* of the said *Robinson Hurst* in his Will, that a Moiety of his Estate, which the said *Anne Hurst* should have at her Death, should go and be divided amongst them.

Bill against an Executrix of an Executrix to discover the personal Estate of the first Executrix, suggesting, that it was the

Intention of her Testator, that a Moiety of the Estate, of which she should be possessed at her Death, should be divided, and go to the Plaintiffs, &c.

The Defendant pleads, that she was made Executrix of the first Executrix, and demurs, for that her Testator had no Power to impose on her how she should dispose her Estate, and that she hath taken an Oath truly to administer. The Plea and Demurrer both allowed.

To this Bill the Defendant pleaded and demurred, the Plea was, that *Anne Hurst* 21 July 1671, made her Will, and the Defendant Executrix, and thereby devised several Legacies; and that the Defendant hath duly proved the said Will, and taken upon her the Execution thereof.

The *Demurrer* was, that it appears by the Plaintiffs own shewing, that *Robinson Hurst* made *Anne* his Wife Executrix, and devised to her his Estate, which *Anne* is now dead, and had made the Defendant her sole Executrix, and that the Plaintiffs Bill being to have a Moiety of the said Estate, on a Pretence of a Clause in the Will of the said *Robinson Hurst*, whereas it appears of the Plaintiffs own shewing, that the said Will, as to the Plaintiffs Claim, is void in Law, and therefore ought not to be supported in Equity, for that the said *Robinson* having no Power to impose on the said *Anne*, how she should dispose her Estate whereof she should be possessed; and the Defendant, as

Executrix

Executrix of the said *Anne*, is by her Oath obliged to pay and dispose her Estate according to the Will of the Testatrix.

The Court allowed both the Plea and Demurrer.

The Lady Frances Clifton, surviving Executrix of Sir Clifford Clifton, and William Clifton, an Infant, Son and Heir of the said Sir Clifford, Plaintiffs.

William Sacheverel, Esq; Defendant.

Bill to transfer a Trust decreed upon Terms therein proposed.

THE Bill was to oblige the Defendant (upon whom the Trust of the Plaintiffs Estate is devolved by the Death of one *Gerrard Holland*, who acted as Guardian and Trustee) to accept the said Trust, the Plaintiffs offering, and are willing, that the Defendant his Heirs, Executors, and Administrators, should be indemnified by the Decree of this Court, and be reimbursed out of the said Estate, all Charges he shall sustain in Performance of the Will of Sir *Clifford Clifton*, and of Trusts therein mentioned, and shall not be accountable for more than he shall actually receive; nor answerable for any Loss of Money put out at Interest or otherwise, by Virtue of the Will, and shall be indemnified against the Actings of *Holland*, concerning the said Guardianship, and that he may account once a Year before a Master for what he shall receive and lay out, and the Defendant complying upon the aforesaid Terms, it was accordingly decreed.

Thomas Gibson, Plaintiff.

Thomas Lewis, Esq; Defendant.

A Brocage Bargain is not to be supported in Equity.

THE Bill was to have an Agreement (as pretended) performed, by which the Defendant, at the Time of his Purchase of the Manors and Lands in the Bill, agreed to convey such a Part thereof to the Plaintiff and his Heirs, he giving as much for the same as the Defendant gave when he purchased it.

The Defendant, by his Answer, denied any Agreement, but that there was some Discourse between him and the Plaintiff at the Time the Lands were purchased, who being an * *Agent* for the Vendor, acquainted the Defendant, that he would procure him such a Bargain as would be worth 10000 *l.* to purchase, and that if he procured such a Bargain, it was expected the Defendant should give the Plaintiff such a Farm mentioned in the Bill, or 1300 *l.* in Money, but if he did not procure such a Bargain, then he was to have nothing, and that the Defendant made no other Promise or Agreement, but that if he found it to be a good Purchase he would be kind to the Plaintiff, but had no Reason so to be, finding the Bargain not to be near the Value the Plaintiff pretended.

* By the civil Law the Function of a Broker is limited to Affairs which are lawful and honest to the Ways allowed of bringing them to a good Issue. Dom. 2 Vol. 245.

The Court was of Opinion, that this was in Nature of a Bro-
kage Bargain, and had no Equity in it, and therefore dismissed the Bill.

Agnes Braithwait, *Plaintiff.*

John Davis and Anne his Wife, *Defendants.*

THE Bill was to be relieved against a Bond of 50 *l.* given by the Plaintiff to one *Mackerell*, deceased, conditioned for the Payment of 25 *l.* &c. the Plaintiff alledging that she had paid the Money to the said *Mackerell* in his Life-time, which *Anne* the Defendant knew very well, she being the Widow and Executrix of the said *Mackerell*, before she married the said *John Davis*, who had now put the Bond in Suit.

a Bill was exhibited to discover Assets. The Defendants demurred, for that it did not appear the Decree was signed and inrolled, and therefore not to answer any Suit grounded on such a Decree.

The Defendants, by their Answer, denied the Payment of any Money on the Bond, thereupon the Court, upon hearing the Cause, directed a Trial at Law upon this Issue; *ff.* Whether the Bond was discharged in *Mackerell's* Life-Time, or how much Money was paid thereon; this Issue was tried, and the Plaintiff had a Verdict, upon Proof that the Money was paid, and afterwards it was decreed, that the said Bond should be delivered up, and Costs at Law, and in this Court, to be taxed by the Master, and paid out of Assets in the Defendants Hands, and the Master taxed 42 *l.* 12 *s.* 4 *d.* for which the Defendants were served with a *Subpœna*, but they taking Advantage that they

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were

were decreed to pay it out of the *Assets*, &c. and having denied that they had any *Assets*, therefore this Bill was exhibited to have a true Inventory on Oath, and *Relief*, &c.

The Defendants demur to this Bill, for that it doth not thereby appear, that any Decree was signed and inrolled, or the Defendants served with any Decree under Seal, before which the Plaintiff could have no Right to a Discovery, or ground any other Suit against the Defendants, nor was there any Decree signed and inrolled; and therefore no Process issuing thereon can be warranted by the Rules of this Court, nor are the Defendants to give Obedience, or answer any Suit grounded on such a Decree, till signed and inrolled; and for that this Suit is to be relieved against an Action at Law on the Bond, and it is not proved, that both the Defendants had Notice that it was falsified; and for that by the Laws of this Realm no Executor is to pay Costs, nor any Bond by him to be delivered up, till real Satisfaction made or proved, least he should be charged with a *Devastavit*.

The Court allowed the Demurrer, and dismissed the Bill.

Henry Heyman, *Plaintiff*. Hill. 1673.

William Gomeldon, Thomas Gomeldon, and Sir Peter Heyman, *Defendants*.

A Bill for the Discovery of a Title; the Defendant pleads he is a Purchaser for a valuable Consideration, without Notice, &c. and that he had obtained a Verdict and Judgment in Ejectment, &c. THE Case was, *ff.* Sir Henry Heyman, the Plaintiff's Father, was seised in Fee, or in Tail, of the Manors and Lands in the Bill mentioned, being of the yearly Value of 400 *l.* and died seised thereof about fourteen Years last past, (the same being, as alledged, *Gavelkind*) that after his Death it descended to Sir Peter Heyman, and to Robert Heyman, and to the Plaintiff Henry Heyman, who were the Sons and Coheirs of Sir Henry Heyman, according to the Custom of *Gavelkind*, the said Henry, the now Plaintiff, being then an Infant, who, upon his said Father's Death, was intitled to a third Part of the Premises into three Parts to be divided, according to the said Custom. The Plea was allowed.

That about six Years last past, Sir Peter and Robert Heyman entered on the Premises, and received the Rents and Profits thereof ever since, and therefore ought to give the Plaintiff an Account of his third Part.

That about the Year 1670, Sir *Peter* and *Robert Heyman* sold two Thirds of the Premises (during the Minority of the Plaintiff) to *William Gomeldon*, and his Heirs, or to *Thomas* and his Heirs, in Trust for *William*, by Virtue whereof they became intitled to the said two Thirds, as Tenants in Common with the Plaintiff, who was intitled to the other Third, but they combining with Sir *Peter* to suppress the Plaintiff's Title, have possessed themselves of the Mansion-House, Deeds, and Writings, and Rents, and refuse to give the Plaintiff any Account, pretending that the Premises were disgaveled, Anno 26 Car. 2. and made descendable at Common Law, and that the whole was conveyed to them by Sir *Peter* and *Robert Heyman*.

That 350 *l.* Part of the Purchase-Money, was, by the Order of Sir *Peter* and *Robert*, left in the Hands of the Defendant *William*, to pay to the Plaintiff, in Satisfaction for his third Part, if he would discharge the same.

And now for a Discovery, &c. and Relief, he exhibited this Bill.

The Defendant answered to Part, and pleaded to the Rest, ff. That as to all the Manors and Lands in the Bill mentioned, to which the Plaintiff makes any Title, or whereby he seeks a Discovery of their Title, of their Tenure, or any Deeds or Evidences concerning the same; the Defendants plead, that *William Gomeldon* is a Purchaser of the same, for a valuable Consideration to him and his Heirs without Notice, &c.

And that in *Hillary* Term 23 Car. 2. the Plaintiff brought his Ejectment for the third Part of the Premises now claimed by the Bill against the now Defendant *William Gomeldon*, and the single Point was, whether any, or how much of the said Lands were of the Nature, Tenure, or Custom of *Gavelkind*; which Point being tried, the Jury gave a Verdict for the Defendant and Judgment thereon, and pleads the same in Bar to the Plaintiff's Bill.

The Court allowed the Plea, to which the Plaintiff might reply, if he thought fit.

William Ramere, *by his Guardian, Plaintiff.*

William Rawlins, *and others, Defendants.*

Bill to discover a Will, the Defendant pleads in Bar, a

THE Bill is, to discover the Will of *John Ramere*, eldest Son and Heir of *William*, and Nephew and Heir of *John Ramere* the elder.

Title by the said Will to himself, and demurs, for that the Plaintiff hath not set forth any to himself, so as to demand a Discovery; the Plea and Demurrer allowed.

The Defendant pleads, that *John Ramere* was seised in Fee of the Lands in the Bill mentioned, and that the 9th of *December* he made his Will in Writing, and, after several specifick Legacies, he gave the Rest of his Estate to the Defendant *William Rawlins*, whom he made Executor, and so makes a Title to himself, and pleads the same in Bar.

And he likewise demurs, for that the Plaintiff had not made any Title to himself to the Premises, whereby to demand a Discovery.

The Court allowed both the Plea and Demurrer.

Nathaniel Tredcroft, *and John Rigg, Executors of John Tredcroft, Plaintiffs.*

Thomas White, *Defendant.*

Bill of Review and Error assigned in the Decree, to which the

THIS Cause came before the Court upon the Plaintiffs Bill of Review, and the Defendant's *Plea* and *Demurrer*.

As to the Bill of *Review*, the first Error assigned in the Decree (which was made 18 *October* 1666, and signed and inrolled) was, that the Master, to whom the Account (in the said Decree mentioned) was referred, was thereby directed not to look back, or meddle with any Overplus of the Purchase-Money paid by the Plaintiffs Testator, and that tho' he should find any Overplus, yet the same should not be charged on the Defendant, and that the Master, if he had Power, would have found, that

the Testator had overpaid his Moiety of the Purchase-Money 83 *l.* whereby the Plaintiffs have lost that Sum with Interest for 17 Years, which is erroneous.

The second Error was, it appears by the Decree, that the Plaintiffs are not only to pay 200 *l.* with Interest, to the Defendant, since the Year 1655, pretended to be given by him to the Lord *Molineux's* Agents, to get longer Time to pay the Purchase-Money, but also the Charges of the Conveyances, and of searching for Incumbrances, and for bringing the Money to *London* with Guards, which ought not to have been decreed, and that the said Decree was therein erroneous.

The third Error was, that by the Decree the Testator ought to have the Moiety of the impropriate Tithes of *Shipleigh*, and the Improvement thereof, and that by the said Decree the Defendant is to account but for a Moiety of 7 *l.* 2 *s.* Part of the 154 *l.* *per Annum*, reserved upon one *Hill's* Lease of the said Tithes, and the Plaintiffs to have no Benefit of the Improvement after the Lease is bought in; but the Plaintiffs are decreed to account with the Defendants for what they have received of the said Tithes clear above what they had paid to the Ministers, which was also erroneous and contrary to Equity; and the Defendants having pleaded, that after many tedious Proceedings had before the Master concerning the Account referred to him, and several Reports made and Exceptions taken to them, and several Hearings upon the said Exceptions, some of which are yet undetermined; and that there is still due to the Defendant several principal Sums, amounting to 885 *l.* 15 *s.* which the Plaintiffs ought to have paid before they be admitted to a *Bill of Review*.

Demurrer, For that there doth not appear such Error in the Body of the Decree, for which the same ought to be reviewed or altered, and that the supposed Errors arise from Matters of Fact not therein mentioned.

The Court over-ruled the Demurrer, as to the first Error, and the Matter to be referred to the same Master in the original Cause, to allow the Plaintiffs the said 83 *l.* &c. or whatever the Testator overpaid for his Moiety of the Purchase-Money with Interest; and as to the second and third Errors the Demurrer to be allowed.

Thomas Thorne, *Gent. Plaintiff.*

Richard Newman *and* Margaret *his Wife, late the Wife of Thomas Baker, Esq; and Daughter of Nicholas Burnet deceased, Defendants.*

Voluntary
Deed subject
to a Power
of Revoca-
tion on the
Tender of a
Shilling,
which was
tendered, but
not at the
Place ap-
pointed, was
set aside by
the Plaintiff
Etc. who was

THE Bill was, to set aside a pretended voluntary Convey-
ance set up by the Defendant, which was made with a
Power of Revocation upon the *Tender of a Shilling*, and which
was tendered accordingly; and at the same Time he who tendered
it declared, that it was with an Intent to revoke the said Deed,
and the same (as 'tis pretended by the Bill) was cancelled, but
the Defendants pretend, *that the Tender was not made at the*
Place appointed, they now set up the said Deed at Law; and
because no Defence was made by the now Plaintiff, at the Trial
he was Nonsuit.
a Mortgagee, and afterwards a Purchaser of the Estate.

And that the Plaintiff being a Purchaser of the Premises,
first by a Mortgage of 500 *l.* and afterwards by an absolute
Assignment, in Consideration of 770 *l.* more paid, therefore he
prayed a Decree to set aside the said Deed.

This Cause was heard at the *Rolls*, and there decreed, that
in Regard 530 *l.* and 770 *l.* had been paid by the Plaintiff,
and that he had new built and repaired the House, in Equity he
ought to enjoy the same against the Defendants and all claim-
ing under them by the said pretended Deed, and for that Pur-
pose the said Deed ought to be set aside against the Plaintiff; but
the Defendants praying a Redemption of the Premises upon
Payment of the said Sums of Money with Interest, together
with the Money laid out in Building and Repairing,

It was ordered, that the Master should compute the same,
and what Profits the Plaintiff, or any other Person for his Use
had received, and he to account for all wilful Spoils and Wastes
done, and upon Payment of what shall appear to be due, the
Plaintiff should assign the Premises to the Defendant, but in
Default of Payment, then the Plaintiff was to hold the Premises
against the Defendants, and all claiming under them by the said
Deed.

Upon an Appeal to the *Lord Chancellor* this Decree was con-
firmed.

Michael Shrimpton, and Elizabeth Holdway, Widow, by Bill of Revivor, Plaintiffs.

George Holman, Executor of Theophila Holman, Defendant.

THIS Bill was brought by the *residuary Legatees* of the Will of *Michael Shrimpton* their Uncle, and it was to have their Legacies of 25 *l.* apiece paid to them, and to have an Account of the *Rents and Profits of a certain Farm, which was assigned to Michael by William his Father for 900 l.* and an Account and Satisfaction of the Sum of 1550 *l.* for which the *Site of the Manor of Whitechurch* was sold, (of which the said Farm was Parcel) over and above the said 900 *l.* and this was against the Executor of the Executor of *Michael Shrimpton*.

Bill by the residuary Legatees of the Testator against an Executor of an Executor to account decreed accordingly.

The Decree was, that the Defendant should account to the Legatees, and for what has been paid and satisfied, and that the Remainder, so far as there shall be *Assets* of the 900 *l.* or other Goods, or personal Estate of *Michael* in the Hands of the Executors, ought to satisfy the same.

But as to the 1550 *l.* for which the *Site of the Manor, &c.* was sold, the Plaintiffs ought to have no Account thereof, they being neither Executors or Administrators to *William*, to whom the same belonged; but as to the 900 *l.* and the Arrears of Rent, and other Part of the said *Michael Shrimpton's* Estate, of which the Plaintiffs demand an Account, as being *residuary Legatees*, the Defendant ought to account.

Anne

Anne Stephens, *Widow and Administratrix of William Stephens, Esq; Plaintiff.*

John Langley, *and Thomasin his Wife, and Jane Castleton, Defendants.*

Bill by the Administratrix of the Lessee against the Administratrix of the Lessor, to be relieved for what she had paid to the said Administratrix, whose Administration was afterwards repealed and granted to another, who sued for the said Rent, and had obtained a Verdict and Judgment against the Administratrix of the Lessee for the same, the Plaintiff was relieved, for that it was paid to the Defendant, who was then the visible Administratrix.

THE Case was, that one *George Moore*, Clerk, Father of the Defendant *Thomasin* and *Jane*, being possessed of the Rectory or Parsonage of *Hackney*, with the Appurtenances; and also of the Manor of *Brombalds* in *Hackney* in the County of *Middlesex*, did, in *March* 1651, demise the same to one *Stephens* (who was the late Husband of the Plaintiff *Anne*) for 31 Years, if he the said *Moore* should so long live, under the Rent of 100 *l. per Annum*, by quarterly Payments; that *Stephens* died intestate, and the Plaintiff *Anne* took out Administration, and paid his Debts; and, amongst the Rest, she paid the said Rent to *Moore*, who died in *October* 1658, by whose Death the said Lease was determined; and the Defendant *Jane* having administered to *Moore*, the Plaintiff *Anne*, who was Administratrix to *Stephens*, paid her 100 *l.* for Rent, and took a Discharge from the said *Jane*, who promised to deliver up the Counterpart of the Lease.

But the other Defendants procuring the Administration to *Jane* to be repealed and granted to them, did now sue the Plaintiff at Law, as well for Rent due in the Life-time of *Stephens*, as she was Administratrix to him, as also for Rent incurred since his Death, and have obtained a Verdict against *Anne* for Rent Arrear from the Death of *Stephens* to the Death of *Moore*.

But it appearing to the Court, by Acquittances produced, that there was no more Rent due at *Stephens's* Death but the said 100 *l.* paid to *Jane*, it was decreed, that the Plaintiff ought to be relieved as to that Sum, because *Jane* was then the Visible Administratrix, and continued so for three Years till the Administration was repealed, and therefore the Plaintiff ought to be at Quiet as to the Money.

But

But as to what was recovered at Law by *Langley* and his Wife, since the Administration granted to them, for Rent due after the Death of *Stephens*, which being 295 l. and brought into Court; that the same be paid out to *Langley* and his Wife, who upon taking it out are to acknowledge Satisfaction, and the Plaintiff to give a Release of Errors at the same Time, and they are likewise to give up the Counterpart of the Lease if they have it, or otherwise a Release to the Plaintiff of all Arrears of Rent due at the Death of *Moore*.

And a perpetual Injunction to stay the Defendant's Proceedings at Law, upon Actions brought for Arrears of Rent, incurred in the Life-time of the said *William Stephens*.

Richard Pitt, *Plaintiff*.

Abigail Corbett, *Widow*, Thomas Dacres, Richard Thornbury, Henry Anson, and Katharine his Wife, *Defendants*.

THE Case was, that the Plaintiff marrying with *Anne*, the Daughter of one *Tucker*, who was possessed of the *Copyhold Lands* in the Bill mentioned, for one Life in Possession, and of three Lives in Reversion, of which the said *Anne* was the Survivor, and these Lands being Parcel of the Manors of *H.* and *D.* which were Parcel of the antient Bishoprick of *Worcester*; the Plaintiff about twelve Years since contracted with Bishop *Morley* for two Lives in Reversion after the Death of *Anne* his said Wife, for which he paid 40 l. to the Bishop, and was admitted, and held the same upon this new Grant ever since the Death of his Wife.

Trial at Law directed to prove a prior Grant.

But the Defendant *Corbett's* Husband having purchased the said Manor of the late *Usurpers*, she doth now pretend, that before the Plaintiff made such Contract with the Bishop, the said Copyhold Lands were granted in Reversion after the Life of the said *Anne*; by the late Bishop *Thornborough*, to one Richard *Thornborough* and to *Katharine* his Wife, and to *Katharine* their Daughter, now the Wife of the Defendant *Anson*, who have brought an Ejectment, and have got a Verdict, whereas (as 'tis suggested in the Bill) that *Thornborough's* Copy (if there was any such) was surrendered by him, by Virtue of a *Letter of Attorney* at a Court held by the said *Corbett* in the Time of the late *Usurpation*, and a new Estate granted for Lives in Reversion, who are since dead; but

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that

that the Defendants having got the Court-Rolls and the Letter of Attorney, and the Surrender, do conceal the same.

The Court directed a new Trial to be had at the next Assizes for the County of *Worcester*, for which the Plaintiff is to name an Attorney, and the Defendants are to produce the *Letter of Attorney*, and the *Surrender* made by *Richard Thornborough*, and the Injunction is to continue, to quiet the Plaintiff's Possession till the Trial had, and the Plaintiff is to give such Security, as the Master shall approve, to answer the Mesne Profits unto *Abigail*, in Case the Verdict shall go against him.

Thomas Mafon, and Alice his Wife, the Widow and Executrix of William Matthews, who was Brother and Heir of Thomas Matthews the younger, Plaintiffs.

Thomas Cheyney, Esq; William Webster, Elizabeth Webster, and Clement Armitage, Defendants.

The Husband entered into a Trust to pay his Wife 500*l.* if she survived, and afterwards he devised several Lands to her for Life, and some in Fee, and made her sole Executrix, &c. she possessed herself of the personal Estate, but procured the Statute to be extended after the Death of her Husband for her 500*l.* and this was against the Heir at Law, who was relieved if it should appear before a Master, that the personal Estate of the Testator, and the Rents by her received of his real Estate, shall amount to more than 500*l.*

THIS Case, upon the Pleadings, was as followeth, (*viz.*) *Thomas Matthews* the elder having acknowledged a *Statute-Staple* to several Persons (of whom the Defendant *William Webster* was the Survivor) defeasanced for the Payment of 500*l.* to *Katharine* the Wife of the said *Thomas*, in Case she survived him; and being seised in Fee of the several Lands in the Bill mentioned, did by his last Will, dated 9 *March* 1646, devise unto his said Wife *Katharine*, all the said Lands during her Life, and for one Year after her Death, and after the Determination of that Estate, then to *Thomas Matthews* the younger, and his Heirs, in Case the said Testator died without Issue of his Body; and he devised some other Parcels of his Lands to the said *Katharine* and her Heirs, and made her sole Executrix, and soon after died without Issue: After his Decease

Katharine

Katharine the Widow proved the Will, and possessed her self of the personal Estate to a considerable Value, which ought to have been employed towards Payment of his Debts, and entered on the Lands, and received the Profits thereof during her Widowhood; and afterwards having married the Defendant *Cheyney*, they received the Profits, &c. during the Coverture.

Anno 1669 *Katharine* died, and *Cheyney* her Husband received the Profits one Year after her Death, and ever since; and about five Years last past *Thomas Matthews* the younger died without Issue, and then *William Matthews*, the Plaintiff *Alice's* first Husband, being Brother and Heir of *Thomas*, and who survived *Katharine*, became intitled to the Fee-simple of the Lands.

William Matthews, by his last Will, devised both his real and personal Estate to his Wife *Alice* the now Plaintiff, and about August 1669 he died without Issue, and *Alice* his Widow hath since married the Complainant *Mason*, who, in Right of his said Wife, is intitled to the Lands and Estate, but is interrupted by an *Extent* on the said Statute by *William Webster*, the surviving Cognisee, in Trust for the said *Katharine*; and *Cheyney*, the Defendant having obtained an Assignment thereof from the said *Webster*, doth now receive the Profits.

That the said Statute is not forfeited in Equity, because *Thomas Matthews*, the Husband of *Katharine*, did, by Deed and by his Will, make a plentiful Provision for her, far exceeding 500 *l.* and this he did, with an Intent to perform his Agreement, by which he was to leave her that Sum, and never intended, that the Lands devised to *Thomas Matthews* the younger, should be charged with this Statute.

That the personal Estate of *Thomas* the Testator, ought in the first Place to be applied towards the Satisfaction thereof, as far as the same will extend; and if that is not sufficient, then other the real Estate of the said Testator ought to be contributory in Proportion with the Lands he devised to *Thomas* the younger.

That *Cheyney* the Defendant hath procured the Lands which were given by the Testator to the said *Katharine* and her Heirs, to be settled on himself, and which were intended to be in Satisfaction and Discharge of the said Statute, and would now charge the same on the Lands of the Plaintiff only.

The Decree was, that *Cheyney* and *Elizabeth Webster* account before a Master for the real and personal Estate of the said Testator, *Thomas Matthews* the elder, which came to their, or either of their Hands, or to the Hands of the said *Katharine*; and that the Master enquire into the Value of the real Estate, devised to her by the Will of the said *Thomas*; and that if it

shall appear, that the personal Estate, with the Rents and Profits of the real Estate, were sufficient, and amounted to so much as would satisfy the 500 *l.* secured by the said Statute, then the Record thereof shall be vacated; and if it shall appear, that the Defendants, or either of them, have received more than will satisfy the Statute, then they are to account for, and pay so much to the Plaintiffs to be taxed by the said Master, he making all just Allowances; but if the personal Estate, and the Profits of the real, were not sufficient to discharge the said 500 *l.* then what is defective shall be supplied by the Statute, and *Cheyney* shall have the Benefit thereof to reimburse himself.

Edward Newman, *Plaintiff.*

Fabian Holder, *and* John Holder, *Defendants.*

Bill to discover a personal Estate; the Defendant

THE Bill was, to discover the personal Estate of one *Thomas Newman*, the Plaintiff's Grandfather. The Defendant pleads a Deed of Bargain and Sale from the Administrator, and demurs, for that the Plaintiff hath no Title being neither Executor or Administrator.

The Defendants plead a Deed of Bargain and Sale thereof, from one *Alexander Newman*, his Administrator, under whom they claim; and that the Defendant *Fabian Holder* is likewise Administrator to the said *Thomas Newman*, and demurred, for that the Plaintiff hath no Title.

And the Court allowed both the Plea and Demurrer.

Coningsby Williams, *Plaintiff*.

Michael Roberts, *Doctor in Divinity, Defendant*.

THE Bill is to be relieved against a Bond of the Penal-Plea of Privilege of the University of Oxford, which the Plaintiff's Father gave the Defendant, who pleaded his *Privilege*, that he is a *Doctor in Divinity*, Scholar, and residentiary Student in the University of Oxford, and that he ought not to be sued but before the Chancellor of the said University, or his Deputy, or Commissary, for the Time being.

This Plea upon Debate was over-ruled.

Term.

Term. Sancti Hill.

25 Car. 2. Anno 1673.

Humphry Madge, *Plaintiff*.

Charles Wheeler, Thomas May, Edward May, and
Martha May, *Widow, Defendants*.

THE Bill was, to be relieved concerning 1000 *l.* lent by the Plaintiff *Madge* to the Defendant *Wheeler*, to pay certain Sums, due and owing by him to the other Defendants the *Mays*, upon a Mortgage of his Lands in the Bill mentioned, there being a Cause in the Court, in which the now Defendant *Wheeler* was Plaintiff against the other Defendants the *Mays*; and the said *Wheeler*, by Virtue of some Order of this Court made in that Cause, having the Premises decreed to him on Payment of the Monies due on Account, and having, by his *Deed Poll*, assigned his Equity of Redemption, and Interest in the Premises, to the now Plaintiff *Madge*, of which the Defendants had Notice, yet after the Plaintiff had lent the Money as aforesaid, the Defendants and *Wheeler* consented to an Order to dismiss *Wheeler's* Suit, and he assigned or released his Interest in the Premises to the Defendants; and therefore this Bill was brought to have that Release set aside, and that the Plaintiff might have the like Decree against the *Mays*, as *Wheeler* had, and may prosecute the Suit in *Wheeler's* Stead.

The Mortgagor brought a Bill for a Reconveyance upon Principal and Interest, which was decreed; then he assigned his Equity of Redemption to the Plaintiff, upon Payment of the Money to the Mortgagees, and afterwards the Mortgagor and Mortgagees consented, that the Bill brought by the Mortgagor should be dismissed; then the Mortgagor released his Interest, &c. to the Mortgagees, which Release, and the Dismission signed and inrolled, was pleaded against the Plaintiff's Bill to set aside the said Release, and the Plea was allowed.

The Defendants plead, that *Wheeler*, for a valuable Consideration, by a Deed duly executed, bearing Date 29 September last past, did release all his Interest and Estate in the Premises

to the Defendants and their Heirs; and that the said *Wheeler's* Bill in the said Cause was dismissed, and that the said Dismission was signed and inrolled.

The Court allowed the Plea, but that the Plaintiff might reply, and take Issue, if he thought fit.

Mary Trist, *Widow, Plaintiff.*

Edmund Buckeridge, *Defendant.*

THE Bill was, to be relieved against a Bond of 1000 *l.* Penalty, by which the Plaintiff was bound to the Defendant, upon putting her second Son Apprentice to him as a Merchant for eight Years, for which she gave him 150 *l.* and was to provide Clothes, Linen, and other Necessaries for him during that Time, he being then about the Age of fourteen Years and this Bond was with a Condition for her Son's *Truth and Honesty*, and the 1000 *l.* to be levied upon her after three Months Notice of what the Defendant made appear by Oath, or by the Apprentice's Confession, or otherwise, that he (the Master) was damnified by him; which Bond the Plaintiff did enter into upon the Defendant's Assuring her, that he would instruct and fit her Son to manage his Employment, before he put him to trade or deal for him beyond Sea.

Bill to be relieved against a Bond conditioned for the Truth and Honesty of an Apprentice, his Master having drawn up a Note of Goods pretended to be lost, and the Values thereof, and prevailed on the Apprentice to sign it, and an

Issue was directed upon a *Quantum damnificatus*, but the Note not to be given in Evidence.

That some Time afterwards, the Defendant sent this Apprentice to *Dunkirk*, there to be with one *Wychurston*, another of the Defendant's Apprentices, who continued with young *Trist* about six Months, and then left him alone, he being then about the Age of fifteen Years, and being sick, and the Defendant being at that Time in *Dunkirk* pretended that some of his Goods were lost, and drew up a Note of the Particulars, and the Value, amounting to 58 *l.* and prevailed with *Trist* the Apprentice to sign it; and this was about August 1668, and he never acquainted the Plaintiff with it till the Year 1671.

That in the Year 1668, the Defendant sent one *Wellington* to *Dunkirk* to be his Factor, and *Trist* the Apprentice was under him, and they lay together in one Bed near the Defendant's Warehouse.

That

That in *May* 1670, the Factor *Wellington* brought a *Swede* to lodge in the Warehouse, with whom he had contracted a great Friendship, and *Wellington* falling Sick in *July* 1670, the *Swede* watched with him, and sometimes lay with the Apprentice *Trist* in the same Room, but in another Bed.

When *Wellington* recovered, *Trist* gave him an Account of 200 *l.* which he had received, and *Wellington* told the Money, but would not give *Trist* a Receipt; pretending he was to go out of Town for one Night, and had not Leisure then to settle Accounts; and in the same Night (*Wellington* being gone) the *Swede* pretended to be sick, and when *Trist*, and the Rest of the Family, were in Bed and in Sleep, he got out of his Bed and went into the Warehouse, and stole from thence 20 *l.* 6 *s.* 8 *d.* and also *Trist*'s Cloak; but before he went out he called the Mistress of the House, and told her he was sick, but would walk out and take the Air, but did not return; afterwards, in the Morning, *Trist*, upon missing the Money, pursued him, but could not take him.

That the Defendant coming soon after to *Dunkirk* was satisfied of the Truth of this Robbery, but yet afterwards he demanded Satisfaction of the Plaintiff, and also for the Goods mentioned in the said Note, and for other pretended Losses, and threatened to put the Bond in Suit.

The Question before the Court was, whether that *Note* should be conclusive to the Plaintiff, and consequently the Damage sustained by such pretended Imbezilment charged on her, by the Condition of the said Bond; and whether the Damage sustained by the said Robbery was within the Condition of the said Bond, so as to oblige the Plaintiff to make Satisfaction.

And the Court directed a Trial upon a *Quantum damnificatus*, but was not satisfied with the giving the said *Note*, and declared, that it ought not to be given in Evidence, or to be conclusive to the Plaintiff, but that the Defendant at the Trial might charge the Plaintiff, by Way of Damages, with any of the Particulars included in the *Note*, and the Plaintiff is at Liberty to give what she can in Evidence for her or her Son's Discharge.

At the Trial the Defendant (who was Plaintiff in the Action) was Nonsuit upon full Evidence, and producing the *Note*.

Therefore a perpetual Injunction was now prayed against the Defendant to stay all Proceedings on this Bond.

But his Counsel insisting, that the Issue was too streight, for that he could not give Evidence of his Damage by the Apprentice's Neglect, and imbeziling the said Goods, and offering several Reasons and *Affidavits* for a new Trial.

The Court decreed a perpetual Injunction to stay all farther Proceedings at Law for all Breaches within the Condition of that Bond, and which were past before the Action brought upon it by the now Defendant.

And that the Judgment for 278 *l.* 6 *s.* 6 *d.* formerly given by the Plaintiff to abide the Order of the Court, which should be made on the Hearing this Cause, be forthwith vacated, or Satisfaction thereof acknowledged on Record.

Thomas Powel, *Plaintiff.*

Turbervile Morgan, *Junior, and* Richard Crofts,
Defendants.

THIS Bill was to be relieved against a Bond of 300 *l.* given by the Plaintiff to the Defendant *Crofts* for Payment of 20 *l.* *per Annum* to the other Defendant *Morgan* for his Life, for that the said *Morgan*, in Consideration thereof, and of Payment of the Arrears of Rent due to the Marquess of *Worcester*, assigned to the Plaintiff two Leases of Lands in the Bill mentioned, of which one was for 31 Years, and the other for 99 Years, if three Lives should so long live, which were formerly granted by the said Marquess to one *John Watson* deceased, whose Widow the said *Morgan* married, and continued in the Possession thereof after her Death, tho' before her Marriage with the said Defendant *Morgan*, the Plaintiff suggested that she had assigned the said Leases to Trustees for the Use of her Children by the said *Watson*, and the Lease of 31 Years expired by her Death, and *Morgan* being 150 *l.* in Arrear of Rent, and the Lease forfeited by Breach of the Proviso therein, the Marquess entered, and the Plaintiff was forced to pay the said Arrears before he could re-enter, and having paid 50 *l.* of the said Annuity of 20 *l.* *per Annum* to *Morgan*, is yet in Danger to be ejected by the Children of *Watson* and their Trustees; and the Defendant *Crofts* hath put the said Bond in Suit for Payment of 20 *l.* *per Annum* to *Morgan*, and is likely to obtain Judgment thereon.

The Lessee assigned two Leases, in Consideration whereof the Assignee gave Bond of 300 *l.* to pay the Lessee 20 *l.* *per Annum* for Life, and all the Rent to the Lessor; the Assignee brought a Bill to be relieved against this Bond, for that the Leases were forfeited for Non-payment of Rent, but he having the full Benefit of the Leases, notwithstanding the Forfeiture, had no Relief.

But it appearing, that the Plaintiff had the full Benefit of the said Leases according to his Agreement, and the Marquess having in the Fine allowed him the full Value of them, notwithstanding the Forfeiture; and the Defendants *Morgan* and *Crofts* offering to indemnify

fy him against the Claim and Title of *Watson's* Children, tho' they had exhibited a Bill in this Court concerning the Premises.

The Court decreed the Plaintiff to pay *Morgan* all the Arrears of the 20 *l. per Annum* to be computed by the Master, and to continue the Payment thereof as it grows due, the said *Morgan* first giving Security, such as the Master shall approve, to indemnify the Plaintiff and his Estate, &c. against the Children of *Watson*.

William Meakin, *Gent. Plaintiff.*

Jeremiah Witchcott, *Baronet*, William Oakes, Edmund Perry, Hugh Pyers, William Duckenfield, &c. *Defendants.*

Bill to be restored to the Office of Clerk of the Fleet Prison, and to have an Account of the Profits of the Place since he was turned out.

THE Bill is to be restored to the Office of Clerk of the Fleet Prison, for which he had paid 900 *l.* and gave Security by a Bond of 2000 *l.* faithfully to discharge his said Office; setting forth, that Sir *Jeremiah Witchcott* granted the Office of Warden of the Fleet to *Oakes* and *Perry*, who granted the Office of Clerk to the Plaintiff for the Consideration aforesaid, and that Sir *Jeremiah* approved the Grant, and that the Plaintiff executed the Office from 15 *January* 24 *Car. 2.* to the 13th Day of *October* 1673; that some Time after *Oakes* granted the Office of Warden to *Perry*, who surrendered the same to Sir *Jeremy*, who, 12 *April* 1673, granted it to *Duckenfeild*, and promised the Plaintiff that he should continue in his Place.

Duckenfeild took an Opportunity (whilst the Plaintiff was attending the Court of *Chancery*) together with the other Defendants, to enter into his Office, and broke open his Desk, and took away his Books and Papers relating to the said Office, and granted it to another.

The Defendant Sir *Jeremy*, by his Answer, owns that *Oakes* told him he had sold the Clerk's Place to the Plaintiff, and that he shewed him a Copy of the Agreement, with the List of the Fees, and which he desired Sir *Jeremy* to approve, but that they were very exorbitant, and thereupon he forbid the Plaintiff to proceed at his Peril, and that no Person, who should come into the Office of *Warden*, should impose a Clerk on him; and that whenever that Office came into his Hands he would not confirm such Grant, and desired the Plaintiff not to part with his Money so easily, especially to *Oakes*, who was not in a Condition to hold the Office of *Warden*, and saith, that he never approved

or confirmed the Grant to the Plaintiff, but that he afterwards granted the Wardenship to *Duckenfeild* without any Exception of the Clerk's Place, but only recommended the Plaintiff to him.

Duckenfeild owns that he promised Sir *Jeremy*, whilst he found the Plaintiff, and other Officers, just, faithful, and diligent, and had given such Securities as he should approve, he would let them continue in their respective Offices, but made no Promise; and that he was a Stranger to the Grant made by *Oakes* to the Plaintiff, but being informed that the Plaintiff had injured him in the Exercise thereof; he took away his Books and Papers relating to the Office, and hath since employed another.

The Decree was, that the Plaintiff should be restored to the Clerk's Place, and an Account to be taken what Profits have been made of the Office since the Plaintiff was turned out, and the same to be paid to the Plaintiff by *Duckenfeild*, and those who have received them; but this Decree shall not make the Plaintiff's Title better, nor confirm or establish him by any other Title in it than what he hath insisted on by the said Judgment, nor is any Relief intended him against Damages which *Duckenfeild* may recover; and it was decreed, that the Security of 2000 *l.* given to *Oakes* should stand as a Security to *Duckenfeild*, to indemnify him against any Damage he hath or may suffer by any Act of the Plaintiff for or by Reason of the said Office.

John Mole, Gent. Son and Administrator, de Bonis non, &c. of John Mole deceased, Plaintiff,

John Franklin and George Franklyn, Executors of Nicholas Franklin and Elizabeth Bosse, Widow, Defendants.

JOHN Mole, the Plaintiff's Father, being bound for *Thomas Bosse*, Father of the Husband of the Defendant *Elizabeth* for several Sums of Money, and having taken Counterbonds of the said *Thomas*; and the Plaintiff's Father *John Mole*, having
The Plaintiff, as Heir and Administrator to his Father, who was a Creditor of one Bosse, obtained a Judgment upon a Counterbond given to his Father against the Son and Heir of the said Bosse the Debtor, who had mortgaged the Lands to Franklin, and some Titles being set up against the said Judgment of the Bond-Creditor, and he having exhibited a Bill to discover them, he was ordered to redeem against the Mortgagee, and the Widow of the Heir at Law having borrowed more Money of the Plaintiff on Bond, she was ordered to redeem against the Plaintiff, but not without paying all the Principal and Interest both on the Mortgage and the last Bond.

paid several of those Sums, and *Thomas Bosse* dying before *Mole* the Father had any Satisfaction, the now Plaintiff being his Son and Administrator *de Bonis non, &c.* put the said Counterbonds in Suit against *Bosse*, the Son and Heir of *Thomas Bosse*, and late Husband of the Defendant *Elizabeth*, and in *Trinity* Term 1659, obtained a Verdict and Judgment against *Bosse* the Son for 1509 *l.* and thereupon extended the Lands in the Bill mentioned, and which descended to him upon the Death of his Father; and now the Defendants set up several Titles to the said extended Lands which the Plaintiff seeks to discover, and when and to whom made, and for what Considerations.

And it appearing, by the Defendants Answer, that *Bosse* the Father, in the Year 1637, after he had settled those Lands in Trust for his Wife, mortgaged Part of them to one *Bowyer* for 200 *l.* and gave the Mortgagee a *Recognisance* of 400 *l.* for Performance of Covenants; and that in the Year 1651, *Bosse*, the Son, joined with the Executors of *Bowyer* in conveying the Lands to *Nicholas Franklin*, for the Residue of a Term of 99 Years in Consideration of 300 *l.* and had assigned the *Recognisance* to him.

That the Defendant *John Franklin* is intitled to the Premises by the Will of *Nicholas*, (who died *Anno* 1659, which was an absolute Conveyance.

And that *Elizabeth* claims the Premises by the Will of *Thomas Bosse*.

The Court decreed, that the Plaintiff, *John Mole*, should redeem against the *Franklins*, whose Title appeared to be only a Mortgage, and that he should enjoy the Premises against the pretended Claim of *Elizabeth*, and all claiming under her, *nisi Causa, &c.* upon a *Subpœna* served.

But upon a Re-hearing it was decreed, that after the Plaintiff, *John Mole*, had redeemed against the *Franklins*, the Defendant *Bosse* should redeem against him, paying what should appear to be due to him upon Account, and that if the Plaintiff should not redeem within a Time limited by the Master, then *Franklin* should hold the Premises discharged of the Equity of Redemption, and the like Direction, that if the Plaintiff redeems against the *Franklins*, and *Elizabeth* doth not redeem against him, then he to hold the same discharged of the Equity of Redemption.

And it appearing, that the Defendant *Elizabeth* had since her first Husband's Death, acknowledged a Statute of 600 *l.* to one *Almond*, in Trust for the Plaintiff *John Mole*, for securing the Payment of 300 *l.* and Interest, payable in *May* 1670, the Court ordered that the Master consider of that Matter, and if he finds it a just Debt, that then *Elizabeth* should pay it before she be admitted to redeem, and the Plaintiff farther insisted to bar her

her from redeeming and coming to an Account, that he had obtained a Release from her, but, upon reading it, the Court was of Opinion, it ought not to bar her; the former Decree was vacated.

Oswald Moseley, *Esq*; Edward Moseley and Nicholas Moseley, by T. Lancashire their Guardian, Plaintiffs.

Edward Moseley the Elder, Edward Moseley Junior, his Son and Heir, by his Guardian, and Anne Moseley, Defendants.

Case on same will 2. Cha. Rep. 105. But the points different.

THE Bill was for the Performance of the Will of Sir Edward Moseley, who being seised in Fee of Lands in Lancashire, and in several other Counties, of the Value of 2500 *l.* in the Time per Annum, did, by his said Will, appoint the Defendant Edward Moseley the Elder, and his Aunt Anne Moseley, Executors, and that they should enjoy his Lands for 15 Years after his Death for the Payment of his Debts, &c.

A Trust being not performed within the Time limited, a farther Time was given by the Court for the Performance; and the Testator having devised his Estate to his Executors for fifteen Years after his Death, with a Power for them to nominate which of the Sons of Nicholas Moseley, &c. should have the said Lands. The Court decreed them to nominate one within a Fortnight, otherwise the Court would nominate one of the three Plaintiffs.

And he devised, that (in Case he should die without Issue Male) all his Manors, Lands, &c. after the Expiration of the said fifteen Years, should be and remain to Edward Moseley the Son (now Defendant) and the Heirs Males of his Body, and for Default of such Issue to Edward the Father (one of his Executors) and the Heirs Males of his Body; upon Condition, that the said Edward the Father should, within five Years after the said Testator's Death, purchase with his own Money (but to be reimbursed with Interest to him upon Interest, out of the Profits of the Premises, so soon as may be after the said fifteen Years expired) so much Lands in England as the Purchase thereof would, *bona fide*, amount to 7000 *l.* of a good Estate in Fee, in the Name of himself and the said Anne; and that within six Months after the said Purchase, to settle the same to the Use of the said Nicholas the Plaintiff (Brother of Edward the Executor) for Life, without Impeachment of Waste, and after his Decease to the Use of the said Plaintiff Oswald, and the Heirs Males of his Body, Remainder over to the other Sons of Nicholas

cholas, and the Heirs Males of their Bodies, severally, successively and respectively in Tail Male; and for Want of such Issue, to the Use and Behoof of the Defendant *Edward* the Father, his Heirs and Assigns for ever.

And, in Default of such Settlement, then the Uses before limited of the said *Edward's* Lands, to *Edward* the Son, and the Heirs Males of his Body, and the Uses to *Edward* the Father, and the Heirs Males of his Body should cease, and then and in that Case, or in Case of Performance of the said Condition, and that *Edward* the Father and Son should both die without Issue Male of their Bodies, then the said Manors and Lands were devised by the said Testator, and the Reversion and Remainder thereof (expectant upon the said Estates-Tail) to the said *Anne Moseley* and *Edward Moseley upon Trust*, that they and their Heirs should settle the same upon such of the Sons of the said *Nicholas* the Father, as they should think fit, and most worthy and hopeful, and the Heirs Males of his and their Bodies, with other Remainders over to such other Persons of the Name and Blood of Sir *Edward* the Testator, and the Heirs Males of their Bodies, as the said *Anne* and *Edward Moseley*, and their Heirs, should think fit, it being his Desire, that his Lands (except what was excepted) should remain in his Name and Blood so long as it should please God to permit the same.

Sir *Edward* the Testator died 14 *October* 1665, without Issue, and the said *Edward* the Father did not lay out 7000 *l.* of his own Money to purchase Lands as aforesaid, pretending the Will was litigated, so that the Uses limited by the said Will to the said *Edward* the Son and *Edward* the Father in Remainder, concerning the Testator's own Lands, are, by the Direction of the said Will, ceased and determined; and the Limitation of the Reversion in Fee to the said *Edward* the Father, and to *Anne Moseley* upon the said contingent Remainders is vested in them in Trust for such of the Sons of the said *Nicholas* the Father, as they shall appoint, and the Complainants have desired them to settle the same accordingly, which they refuse; therefore, that they may execute the said Trust, and convey the Reversion of the Lands (after the End of fifteen Years) to such of the Plaintiffs as they shall think fit, with such Remainders over, as by the said Will is directed; and that they may be decreed to declare their joint Consents on which of the Plaintiffs they do agree to settle the said Manors and Lands.

The Defendant, *Edward Moseley* the Father, confessed the Will as the Plaintiff had set forth, but that the same was contested both here and in the Consistory Court at *Chester* and at *York*, and the same is still depending; that it hath been likewise contested in other Courts of Law, and threatened to be tried at

at Law, and that he hath moved several Times that the Will might be confirmed and decreed by this Court, that no more Trials may be had concerning it, but these Motions were always denied, and as yet there is no final Sentence or Decree made for the Will; that several other Claims have been set up unto all, or the greatest Part of the said Estate, and some Part of it, to the Value of 700 *l. per Annum*, is recovered away, and more Suits are growing and arising about the said Will and Estate, by which this Defendant hath been put to great Charges in defending, and hath, for that Purpose, already spent above 4000 *l.* and the Plaintiffs have not contributed any Thing towards the said Charges, or the Defence of the said Will or Estate, and the Deeds and Writings concerning the same are kept from him, and the real Estate is all settled by the Decree of this Court, upon *Charles North* and his Lady, and Sir *John Maynard*; so that the Plaintiffs have no Colour to claim any Thing by the Will; neither is this Defendant in Equity obliged to lay out 7000 *l.* of his own Money, until it be determined to be a good Will, and the Title by the same settled, that so the Estate devised may be a good Security for the Repayment thereof with Interest; and that after the Estate is settled he may have his Charges and Expences which he hath laid out in Defence of the Will, and likewise his Debt of 1300 *l.* and Interest, due to him by the Testator at his Death, satisfy'd and paid.

Edward the Son insists on his Infancy, and *Anne* answers, that *Edward* the Father and Son have exhibited their Bills to be relieved, which if they are, and the 7000 *l.* shall be laid out, there will be no need of any *Nomination*, and that there is owing to her from the said Testator's Estate, for which she stands bound for him, above 12000 *l.* and that there are several Rent-charges issuing out of the Manors and Lands, some to her own Use, and others in Trust for other Persons, and that if she join in a Conveyance of the said Lands she may thereby extinguish the said Rent-charges, and therefore she ought not to join in any Conveyance, to the Prejudice of her self, or of any Person for whom she is intrusted.

The Decree was, that *Edward Moseley* may have longer Time to lay out the said 7000 *l.* in a Purchase of Lands, pursuant to the Will, until six Months after his eldest Son, the other Defendant *Edward*, shall attain his full Age of 21 Years, being now about the Age of 17, unless the Will shall be confirmed and settled before that Time by the Decree of this Court, or by the Agreement of all Parties who may contest the same, in either of which Cases the said *Edward Moseley* is to lay out the said 7000 *l.* as aforesaid.

And

And that no Advantage shall be taken for not laying it out, and settling the Lands by the Time prefixed in the Will.

That the Defendant *Anne Moseley* and *Edward Moseley* the Elder, do, within a Fortnight next after the entring this Order, nominate such one of the Plaintiffs as they shall think fit, on whom to settle the Lands of the Testator after the End of 15 Years, that it may stand as a Caution, least the Executors, or either of them, should die before such Nomination, and so the 7000 *l.* should not be laid out as aforesaid; and that if either Party should fail to nominate within the Time, or that there shall be any Difference between them concerning such *Nomination*, then this Court will nominate one of the three Plaintiffs, it being the Testator's Intent, that his Estate should not be divided, but settled upon one Person; and the Plaintiffs may be at Liberty hereafter to move for Interest of the said 7000 *l.* in Respect the same hath not been laid out within the said five Years by the said Will appointed.

William Ward and Humphrey Bowyer, *Plaintiffs.*

Elizabeth Summer, Sarah Adams, Deborah Glover, *Widow*, Thomas Davis and Elizabeth his Wife, and others, *Defendants.*

Feme Covert
decreed to
dispose what
she had ac-
quired by
Industry,
without the
Control of
her Hus-
band, as if
she had been
a Feme Sole.

Thomas Davis, and Elizabeth his Wife, being possessed of a personal Estate to a considerable Value, and of several Securities from the Plaintiffs and others, for Money lent, he the said Thomas did, by Articles under his Hand and Seal, in Consideration of the natural Love and Affection which he did bear unto the Wives of the Plaintiffs Ward and Bowyer, who were his Daughters, assigned the said real Securities of Land and Money, and all the personal Estate he had or should have, unto the Plaintiffs, their Executors, &c. and did make them his Attornies to levy, sue for, and recover the same equally between them, in his, or his Wife's, or Trustees Names, and, by the said Articles, declared that the said Trustees should stand intrusted for the Plaintiffs by equal Moieties; in Consideration whereof they were to allow unto the said Davis and his Wife for their Lives, 20 *l. per Annum*, by Virtue whereof the Plaintiffs became intitled to the Premises, but that the Defendants the Trustees had got the said Securities and personal Estate, and disposed the same as their own Estate.

And

And it appearing by the Answer of *Elizabeth Davis*, that she put out several Sums at Interest, which she had acquired by her own Industry, (being a *Midwife*) and bought and sold Goods as a *Feme-sole* Merchant, and that she had not any Maintenance or Estate from the said *Thomas Davis* her Husband, for above eighteen Years, but that she maintained both him, and her self, and four Children, during all that Time, and had raised and paid her Daughters Portions being 400 *l.* apiece, and had paid 200 *l.* Debts which her Husband owed, and discharged him out of Prison, and all this out of her own Money, and continued to maintain her Husband, till lately he broke open her Chest, and took away her Plate and Money, and Securities for Money, and other Securities taken in the Name of the Wife of the Plaintiff *Bowyer* on the same Trust.

It was insisted for her, that she ought not to be deprived of that Estate, because her Husband had agreed by the said Articles, that she who got it should dispose it at her Pleasure, allowing him a Maintenance, which she always did, and better than the now Plaintiffs proposed to allow him.

And thereupon it was, by Consent of all Parties, decreed, that the said Estate should be divided into Moieties, one to the Plaintiff, and the other to *Elizabeth Davis*, or to whom she should appoint; and that the Plaintiffs and the said *Elizabeth* pay unto the said *Thomas Davis* 20 *l.* per Annum, during his Life, and that what Interest of Money shall remain in the Hands of the Plaintiffs, and what they shall have received, be divided as aforesaid, one Moiety to the Plaintiffs, and the other to *Elizabeth*, or to whom she shall appoint.

This seems to be a reasonable Decree, tho' by the civil Law the Profits which a Wife may make by her Frugality, Labour, or Industry, do belong to the

Husband, as Services which the Wife owes him. *Dem. 2 Vol. 182.*

And that such Part of the Articles, which giveth the Plaintiffs all the Estate of the said *Thomas* and *Elizabeth* his Wife, be discharged; and that *Elizabeth* do keep or dispose what she hath by Virtue of this Decree, or otherwise, and what she shall hereafter acquire by her Industry, either by Gift, or by her Will, without any Control of the Plaintiffs, or her Husband, as freely as a *Feme sole* may do.

Francis Newman, *Plaintiff.*

John Jones, Nicholas Trefilian, and David Grosse,
Defendants.

Trustee
compound-
ing a Debt
by the Con-
sent of him
for whom he

THE Intent of this Suit was, to have a Bond of 85 *l.* which *Trefilian* gave to *Jones*, to be assigned to the Plaintiff, with Authority to put the same in Suit.

is intrusted, is no Breach of Trust.

The Case was, *Hannibal Newman* gave the Plaintiff *Francis* 104 *l.* which was the Remainder of some Purchase-Money due from *Grosse* to *Hannibal* for Lands, which *Grosse* had purchased of him, and for which this Bond was given.

Francis Newman, the now Plaintiff, put this Bond in Suit against *Grosse*, but wanting Money to prosecute and proceed in the Action, he borrowed fourteen Pounds of the Defendant *Jones*, and left this Bond in the Hands of *Jones*, as a Security for the Payment of the said 14 *l.*

Bond left in
the Hands
of another,
as a Pledge

to secure the Payment of Money borrowed.

Afterwards it was agreed between the Plaintiff *Francis Newman* and *Grosse*, that he the said *Grosse* should have his Bond delivered up; he entering into a Statute to *Jones* for the Payment of 130 *l.* in Trust for the Plaintiff *Francis* and *Jones*, was to have no Benefit thereby, but only to repay himself the said 14 *l.* and Interest thereof.

Trefilian, by a Judgment prior to this Statute, extends the Lands of *Grosse*, and then *Jones*, in Consideration of 85 *l.* to be paid to him, assigns this Statute to *Trefilian*, and takes his Bond for the Payment of the said 85 *l.* which *Francis Newman*, the now Plaintiff, insisted to have assigned to him.

But it was argued for *Jones*, that he had Power given to him by the Plaintiff *Francis* under his Hand and Seal, for what he did in compounding the Debt with *Trefilian*, and in taking his Bond for the 85 *l.*

Thereupon the Court acquitted him from any Breach of Trust or Fraud, and decreed him to account for what he had recovered or received of *Trefilian*, but his Costs and Charges in suing or recovering the same, together with his own Debt of 14 *l.* and Interest to be allowed, and also his Costs in this Suit, since the Answer came in; and that what remains after such Deductions,

ductions shall be paid by the said *Jones* to the Plaintiff *Francis*, with Interest from the Time he received it.

Richard Prestidge, *Plaintiff*.

Richard Eden, *and* John Bridgman, *by his Guardian*,
Defendants.

And

Between John Bridgman, *by his Guardian*, *Plaintiff*,

And Edward Prestidge *and* William Taylor, *De-*
fendants.

THE Plaintiff being Administrator *de Bonis non*, &c. of *Mary* the Widow and Administratrix of *Edward Prestidge*, who was possessed of a long Term for Years of Lands in the Bill, &c. sued the Defendants, who were Executors or Legatees of the said *Mary*, they having got the *original Lease* and the *Assignment*; and other Deeds and Writings concerning the Premises; and that the same might be delivered up to him, and that they might discover their Title.

Defendants, who had the original Lease and the Assignment thereof, and they were decreed to deliver it up.

It was insisted for the Defendants, that *Mary*, at the Time Administration was granted to her of the Estate of the said *Edward*, was opposed by several of his Relations, to whom she was compelled (by a Sentence of Allocation in the Spiritual Court) to pay 85 *l.* and that afterwards she assigned the Premises to the Defendant *Bridgman* in Trust for her self for Life, and by her Will she devised the same to him, and made him sole Executor.

That a Trial at Law was had between the now Plaintiff and the Defendants concerning the Premises, and the Plaintiff was Nonsuit; but the Reason of it was, because the Defendants refused to produce the said Deed of Assignment at the Trial, contrary to an Order of Court for that Purpose.

Therefore it was decreed, that they do deliver up the said Deed of Assignment, and all other Deeds and Writings

to the Plaintiff concerning the same, that he may be enabled to proceed at Law to try the Title.

Francis Vanaker, *Esq*; Plaintiff.

Edward Nash, *Esq*; Robert Leeson, Thomas Hiempfall, and John Johnson, *Defendants*.

Bill against
the Commis-
sioners and
Assignees of
a Statute of
Bankruptcy,
to be let in-
to the Sta-
tute, paying
Contribution-Money;

THE Plaintiff, who was Son and Heir, and also Executor of *Nicholas Vanaker* his Father, sued the Defendants as Commissioners and Assignees of a Statute of *Bankruptcy* against one *Shelbury*; and this was, to be let in to pay his Contribution-Money, and to have a proportionable Benefit of the said Bankrupt's Estate amongst the Rest of his Creditors.

The Case was, that *Shelbury*, who was a Scrivener and Agent for the Plaintiff's Father, had got several Thousands of Pounds of the Father's Money in his Hands, for which the Father had only *Shelbury's* single Bonds, on some of which he got Judgment and Execution on *Shelbury's* Goods, which were appraised at a less Sum than was due, Part whereof came to the Father's Possession in his Life-time, or to his Bailiff, one *Reeves*, after his Death, and were sold by the Father, or the said *Reeves*, but no Part thereof came to the Plaintiff or his Assigns.

That a Commission of Bankrupt was sued out against the said *Shelbury* by the Defendants, who pretend, that *Shelbury* had committed an Act of Bankruptcy before the Father had obtained any Judgment against him.

That *Leeson* and *Nash* have brought several Actions against the now Plaintiff and his Trustees, in three of which Actions they were nonsuited; that in another Action he had obtained a Verdict for 920 *l.* since which the Plaintiff, before any Assignment made of the Bankrupt's Estate, hath offered to pay his Contribution-Money, and that the Defendants promised he should have Notice before any Assignment made, and come into the Statute, but yet have excluded the Plaintiff, who is a Creditor for above 6000 *l.* principal Money.

The Commissioners insist, that they found *Shelbury* a Bankrupt before the Father's Judgment, and the Assignees say they have recovered against the Plaintiff 53 *l.* Damages in an Action of *Trover* for *Shelbury's* Goods in his Hands, and they all denied any Promise to give him Notice when a *Dividend* should be made

made by any *Assignment*, and that before it was made the Plaintiff should come in; and that he could not expect it, because he never paid any Thing towards the Charge of the *Commission*, nor had given any Assistance to the Discovery of the Bankrupt's Estate, but had rather concealed it, and converted it to his own Use; so that he could not be intitled to any Relief, having not sought it, and paid his *Contribution-Money* as directed by the Statute of Bankrupts; and they plead the Verdict and Judgment obtained at Law against the Plaintiff, which upon Argument had been heretofore allowed.

But now the Counsel for the Plaintiff offering, that he should stand in his Father's Stead, and be accountable for all that the Father had received of the Bankrupt's Estate, according to the real Values the same were appraised at in the Inventory thereof, and that he should pay a reasonable Proportion of Contribution-Money, so that he might be let into the Statute.

It was decreed, that he should stand in his Father's Stead, and come to an Account with the Defendants for the whole Estate of the Bankrupt, according to the real Value thereof, to be appraised in an Inventory, and that before the 17th of *March* he pay into the Hands of the Treasurer appointed for the Benefit of the Creditors, the said Sum of 920 *l.* which he had recovered, and acknowledge Satisfaction on the said Judgment at his own Charge; that then the Recognisance entered into by the Plaintiff and his Sureties on continuing the Injunction in this Cause, be vacated; and that before he be let in as a Creditor, he pay to the said Treasurer Contribution-Money, according to the Bulk of his Debt, so that the Contributions of all the Creditors may be reduced to an Equality according to their respective Debts; and thereupon he is to be admitted into the Statute.

The Lord Willoughby and others, Plaintiffs.

Dixie and others, Defendants.

THE Case was, the Lands in the Bill mentioned were devised to the Plaintiff, subject to a Proviso for the Payment of 2000 *l.* to the Defendants, within three Years after the Death of the Testator; which Money being brought into Court, the Plaintiff prayed, that he might enjoy the Lands discharged of 3000 *l.* which Money being brought into Court the Lands were discharged from the said Proviso.

from the Penalties in that Provifo against the Defendants, and all claiming under them.

And it was decreed accordingly; and that the Defendants be at Liberty to take it out of Court.

Mary and Elizabeth Needham, Plaintiffs.

Sir Henry Vernon, Sir John Booth, and others, Defendants.

Lands settled in Trust for raising Portions for Daughters, payable up on their Marriage with the Consent of the Trustees, &c. but if they marry without such Consent, then to remain over to another, &c. The Daughters were old and never intended to marry,

75. In this case remarked upon Lord. Rep. 740.
THE Plaintiffs (as Daughters of the Lord Kilmurry) and Robert his Son, and their Brother, came to have the Benefit of a Settlement made by their Father (in which the Brother joined) in the Year 1652, by which the Father and Son conveyed the Premises to the Defendants in Trust, for raising 1500 l. apiece for the Portions of the Plaintiffs, and of Dorothy and Katharine, two other of their Sisters, payable at their respective Marriages, *with the Consent of the Defendants, or the major Part of them,* and for their Maintenance in the mean Time; and that if they should be unmarried when their Portions should be raised, that then the Defendants should dispose the same to the best Advantage they could, to the Intent that the Plaintiffs and their Sisters should receive the Increase thereof, for their yearly Maintenance till their respective Marriages; and if they married *without such Consent,* then the Portion of her so marrying should remain over to another.

but to lay out their Portions in a Purchase of Annuities for their Lives; decreed, that they should have their Portions without being married.

Anno 1653, the Lord Kilmurry died, and the Defendants the Trustees have ever since received the Rents and Profits of the Lands conveyed to them in Trust as aforesaid; and the said Portions are raised, and the Plaintiffs being now advanced in Years, intend not to marry, but to lay out their respective Portions to purchase Annuities for their better Support and Maintenance.

The Question was, *Whether the Plaintiffs ought to receive and have their Portions at their own Disposal, before they were married with Consent as aforesaid.*

And it being admitted, that if either of them should die before Marriage, that the Portion of her so dying would go to her Executor or Administrator; and they offering to give the Trustees

stees reasonable Security to indemnify them from any Claim or Pretence of the other Defendants, who were Infants, (and Children of *Charles* Lord Viscount *Kilmurry*) to whose Use the said 1500 *l.* of such Daughter, *marrying without such Consent* as aforesaid, was limited by the said Settlement.

The Court decreed it accordingly; and that the 1500 *l.* a-piece be paid to the Plaintiffs, they giving such Security as aforesaid, and that upon Payment thereof the Trustees shall deduct the Charges of this Suit.

William Medley, *Plaintiff.*

Nicholas Martin *and* John Rows, *Defendants.*

And

Nicholas Martin, *Plaintiff,*

And William Medley, William Harrington, John Rows *and* Samuel Medley, *Defendants.*

William Harrington, the Defendant, being seised of the Lands in the Bill (and which were in Mortgage to one *Hillersden* for 800 *l.* for 99 Years) contracted with *William Medley* for the Sale thereof, who was to pay for the Purchase 1950 *l.*

ser. He, in whose Name they were bought, was a Debtor by Judgment; now if all the Lands, which were purchased in his Name, were in Trust for the Purchaser, then they could not be affected with the Judgment; but it appearing, that a Moiety was only in Trust, the Judgment-Creditor had Relief. *see 3. Aff. 739.*

William Medley (pretending to avoid the Trouble and Charges of levying a Fine, and forasmuch as *Samuel Rows* was a Batchelor) would make this Purchase in *Rows's* Name, but in Trust for himself and his Heirs; and that *Samuel Rows* should discharge *Hillersden's* Mortgage, with Part of the Purchase-Money, according to an Agreement made with *Harrington* the Vendor, but to keep the same on Foot to prevent all intermediate Incumbrances.

Accordingly *Harrington* the Vendor, did, by Fine and Deed inrolled, convey the Reversion of the Premises to *Samuel Rows* and his Heirs, and this was on the 19th of June 1665, and

and in Consideration of 1950 *l.* paid by *Samuel Rows* (whereof the Mortgage-Money of 800 *l.* was Part) tho' by a Deed of Release, dated about a Month afterwards, *Harrington* did acknowledge, that he received the said Purchase-Money of *William Medley*.

But the Term and Estate of the said Mortgage being at this Time vested in one *Elizabeth Huxley*, she by Deed, dated 20 April 17 Car. 2. in Consideration of 800 *l.* paid to her by *Samuel Rows*, did, by the Consent of the said *Harrington*, assign the Premises to one *Fowles* and *Hodgson*, in Trust for *Samuel Rows* (to whom the Inheritance was intended to be conveyed) for the Residue of the said Term of 99 Years; and the said *Fowles* and *Hodgson*, by Deed declared the Trust of that Term assigned to them, was (after the Inheritance should be vested in *Samuel Rows*) to be for the said *Samuel Rows* his Executors and Administrators.

There were several Hearings of this Cause, and Trials directed upon this Issue, whether the *Conveyances were upon Trust*; and if so, then whether it was a Trust for the whole Purchase-Money, or for Part, and for what Part; and upon a Trial had before the Lord Chief Justice *Hale*, there was a Verdict found for the Defendant *John Rows*, who was Brother and Heir of *Samuel Rows*, to whom the Conveyances were made, and upon resorting back again to this Court, the Lord Keeper *Bridgman* granted a new Trial, and then the Plaintiff had a Verdict against *John Rows*.

This and the cross Cause came on again to a Hearing before the Lord Keeper *Finch*, and then there were these other Ingredients in it;

J. Nicholas Martin the Defendant (now Plaintiff) setting forth, that *Samuel Rows* being accounted a very honest Man, he the said *Martin* lent him 850 *l.* for which he had two Bonds, one was for 400 *l.* upon Condition to pay 200 *l.* the other was for 1000 *l.* upon Condition to pay 500 *l.* on which two Bonds he had obtained two Judgments, and that he had a Note under *Samuel Rows's* Hand for 130 *l.* and that *Samuel Rows* died intestate, and without Issue, so that the Premises descended to *John Rows* as Brother and Heir to *Samuel*, and that he was intitled to the Equity of Redemption of the Mortgage, he having administered to the said Intestate.

Martin exhibited his Bill in this Court against *John Rows*, who pleaded the said Lease of 99 Years, and the Assignment thereof, and that the Reversion after 99 Years descended to him; and it appearing that it was only in Trust, it was decreed, that *John Rows* should convey to *Samuel Medley* and his Heirs, in Trust for *William Medley*, which he had done.

But afterwards, upon another Trial directed by the Lord Keeper *Finch*, and which was had before the Lord Chief Justice *Hale* upon the aforesaid Issue, and a Verdict thereon, that the said Assignment of the Mortgage to *Fowles* and *Hodgson*, and likewise the Conveyance of the Inheritance and Reversion to the said *Samuel Rows* as to one Moiety of the Lands, were in Trust for *William Medley* and his Heirs, and as to the other Moiety in Trust for *Samuel Rows* and his Heirs.

The Court decreed, that *Martin* enjoy one Moiety, in Satisfaction of his Debt by Judgment, and that *Medley* pay him one half of the clear Profits from the Time of obtaining the two Judgments on his Bonds (necessary Charges deducted, and moderate Costs to be taxed) and *Martin* to hold the said Moiety till he shall be satisfied his Principal, Interest and Costs, from the Time the Judgments were obtained, and *Medley* and his Heirs to have the other Moiety discharged from the said Debt and Judgments; that the Master may have a Commission to set out the Moieties, and to ascertain the Values thereof; that it may appear how far it will extend towards Satisfaction of the said Debts and Interest, and how much will then remain to be satisfied.

Philip Lawrence, John Lawrence, and Stephen Lawrence, Executors of Benjamin Lawrence, Plaintiffs. By Bill of Revivor.

Thomas Baskerville, Thomas Cupps, and Richard Jones, Defendants.

THE Plaintiffs, as Executors of *Benjamin Lawrence*, sue A Debtor for a Debt of 126 *l.* due to their Testator from *Francis Baskerville* (Father of the Defendant *Thomas Baskerville*) who, conveyed Lands in Trust for Payment of his Debts, the Executors of the Debtee sue the Heir of the Debtor, he having prevailed with the Trustees to surrender the Land charged with the Debt; all which was acknowledged by the said Heir and Trustees, but they say they permitted the Debtee to retain a Rent of 15 *l.* per Annum, payable to the Debtor towards Satisfaction of the Debt; decreed, that it was not to go in Discharge of the Debt, for the Court had no Ground to stop it.

K

After

After the Death of *Francis Baskerville* the aforesaid *Thomas Baskerville*, the now Defendant, being his Son and Heir, prevailed with the Trustees to surrender the said Lands to him, and afterwards he refused to pay the said Debt, all which was owned by the Defendants the Trustees; but they say they permitted the said Testator, *Benjamin Lawrence*, to retain a Rent of 15 *l. per Annum*, payable to the said *Francis Baskerville*, upon a Lease of certain Grounds, Parcel of the Lands conveyed to the said *Cupps*, and this was towards Satisfaction of the said Debt; and that by a Clause in the said Deed of Trust, the Defendants the Trustees had Liberty to surrender up the Lands to the Heir at Law, to enable him to make a Jointure to a Wife, which he has since made accordingly.

The Court was of Opinion, that the permitting *Francis Baskerville* to hold this Lease, was not in Discharge of this Debt, and if any Rent was due and in Arrear to *Francis Baskerville* there was a Remedy at Law, and no Ground for this Court to stop it; therefore it was decreed, that the Debt, with Damages for the Forbearance from the Time it was charged on the Lands, be paid by the Defendant *Baskerville* with Costs; all which were to be allowed and taxed by a Master.

Richard Tilley, *Plaintiff*.

Daniel Jevon, *Defendant*, Et econtra.

An Account stated and balanced, and no Objection made to it in seven Years, decreed to stand and not to look back.

THE Bill was to be relieved against a Bond of 4000 *l.* put in Suit by the Defendant *Jevon*, conditioned for Performance of Covenants, in an Indenture of *Copartnership* between the Plaintiff and him, and the Equity was, that at the Time in the Bill mentioned, there was an *Account fairly stated, made up, and balanced*, of all Matters relating to the said Copartnership between them; and that, after seven Years Acquiescence, the Defendant now pretends a Breach of Covenants in the said Indenture, and had put the Bond in Suit, and yet during the said seven Years did not charge the Plaintiff with one Error or Mistake in that Account.

And it appearing, that the Defendant had received almost the whole Money on that Account to him, and the Rest was to be paid when the Debts standing were got in.

The Court decreed this to be a good Account, and that the Defendant should not look back into it, but deliver up the Bond to be cancelled, and the Covenants of Copartnership, and a perpetual Injunction till that Time.

Anne

Anne Rogers, *Plaintiff.*

Warwick Bromfield, John Winter, and Thomas Warr, *Defendants.*

THIS Bill was, to examine Witnesses *in perpetuam rei memoriam*, to prove the Will and Codicil of *Henry Rogers*, and to discover his Estate, to which the Plaintiff was entitled by Virtue of the said Will.

Bill to perpetuate the Testimony of Witnesses to prove a Will; Plea that

a Suit is depending in the Prerogative Court concerning the Validity of the Will.

The Defendants plead that there is a Cause now depending in the *Prerogative Court*, concerning the Validity of the said Codicil, in which Court that Matter is proper to be determined.

And the Court allowed this to be a good Plea, *quousque* 'tis determined in the *Spiritual Court* whether the said Codicil is to be proved or not; but without Costs.

Dorothy Wallop, *Widow of Henry Wallop, Plaintiff.*

The Earls of Shaftsbury, Sir Henry Vernon, Henry Wallop, and John Wallop, Infants, by their Guardian, Defendants.

RObert Wallop of *Wexford* in *Ireland* being seised in Fee of several Manors and Lands in that Kingdom, and in *England*, all which were forfeited to *King, Car. 2.* and vested in him by Act of Parliament, and were by his Letters Patent, *Anno 13.* of his Reign granted to the *Earl of Northampton*, Lord Treasurer of *England*, and to *Sir Orlando Bridgman*, the *Earl of Shaftsbury*, and *Sir Hen. Vernon*, and their Heirs, who by Lease and Release in *July 1672*, conveyed the same to *A. and B.* upon several Trusts, to raise several yearly Sums as a Provision and Maintenance for the said *Henry and John Wallop* the Infants; and amongst the rest there is a Trust created, whereby the Plaintiff *Dorothy Wallop* (in Case she survived her Husband) should have an Estate for Life in several of the Lands mentioned in the Bill; in which Deed of Lease there was a Proviso, that if *Dorothy* (surviving her said Husband) shall not within eighteen Months after his Decease, by some good Conveyance in the Law, settle upon the Defendant *John Wallop*, and the Heirs Males of his Body

Trust created, by which the Wife was to have an Estate for Life, on Condition she settle her own Lands on her Husband and her Children by such a Time, which she was willing to do, but not unless her Estate for Life was confirmed.

expectant upon her Death, all her fourth Part of all her Manors and Lands in the Counties of *Somerset* and *Devon*, and elsewhere, of which she is seised of any Estate of Inheritance; then the Settlement upon her Life as aforesaid (after the Death of her said Husband) should be void.

That *Dorothy* survived her Husband, and so became liable to make such Conveyance within eighteen Months after his Decease, or to loose the Benefit of the said Trust.

And she having a real Intention to make such a Conveyance, (viz.) to her self for Life, Remainder in Tail Male to *John Wallop*, Reversion in Fee to her own Right Heirs, with a Power for her, during her Life, to make Leases thereof for twenty-one Years, or for three Lives, reserving the ancient Rent; did declare such her Intention to the *Lord Shaftsbury*, and *Sir Henry Vernon*; and having advised about the Estate for Life made to her self, which was to be in lieu of such Settlement to be made by her, and being advised that by the Intention of the said Proviso she was required to execute a Letter of Attorney, by which she would part with an Estate both in Law and Equity in her own Lands, and in lieu thereof have only an equitable Estate to her for Life for her Jointure; and that liable to future Questions, and doubtful Expositions, by reason of many Limitations and Provisoes, and that it might be dangerous to part with the fourth Part of her Lands, unless she might be secured to enjoy her Estate for Life free from any Disturbance, by the Defendants *Henry* and *John Wallop*, on whom the Lands are settled after her Life;

Therefore she made Application to the *Lord Shaftsbury*, that some way might be contrived to secure her Estate for Life, who replied, that by Reason of the Death of her Husband, the Overplus of the Rents and Profits after the yearly Trusts performed, would amount to a considerable Sum, (which the Trustees never intended to convert to their own Use) and after Payment of Debts, and such incident Charges which they should think fit to allow, they were willing that such Overplus should be as a Security to her for the quiet enjoying her Estate for Life; and that if she would execute a Settlement of her said 4th Part according to the Intent of the said Proviso, then the Trustees would secure her Estate for Life in Manner following, (viz.) That the Defendant *Hen. Wallop* should at his Age of 21 Years confirm it, otherwise the Trustees will not then deliver up the said Trust-Estate to him, but suffer the said *Dorothy* to enjoy it, until he shall attain to the Age of 24 Years; and that they may have Power out of the Profits to pay to the said *Dorothy* any Sums they shall think fit for want of such Confirmation, to secure her against *John Wallop* (in case *Henry* should dye in his Minority) until she is satisfied, but the said Trustees did not think it prudent to make any Alteration in the said Deed without the Direction of this Court.

Whereupon it was Decreed in manner as proposed, and the Master to settle Conveyances for *Dorothy* to convey the Reversion of her own Estate, Expectant upon her Death, with the usual Power to make Leases for Twenty-one Years, &c. and to direct a Security out of the Overplus of the Rents and Profits, &c. for *Dorothy's* Enjoying her Estate for Life against *Henry* and *John Wallop*; and that the Defendant, the Trustees shall be indemnified for what they shall do in Pursuance of this Decree.

George Rives, *Plaintiff*.

Edward Richards, and Katharine *his Wife*, *Administratrix* de Bonis non, &c. of Robert Astin *deceased*, *Defendants*.

THE Plaintiff exhibited his Bill, to be relieved against a Judgment at Law, obtained by the Defendant against *John Rives* deceased, to whom the now Complainant is Cousin and Heir; the Defendants having brought a *Sci' Fac'* to revive the said Judgment against the Plaintiff.

the Judgment-Creditor pleads, that he brought a *Scire Facias* against the now Plaintiff, who pleaded that he had no Assets by Descent, and therefore needs no Relief of this Court; the Plea was allowed.

The now Defendant (who was Plaintiff at Law) pleads, that tho' he did bring a *Scire Facias* to revive the Judgment against the now Plaintiff, as Cousin and Heir of *John Rives*; yet he the now Plaintiff (then Defendant) pleaded to that Action, that he had not at the Time of the suing out the said *Scire Facias*, nor at any Time afterwards, any Lands or Tenements from the said *John Rives*, by Descent of Inheritance or otherwise, whereof the said *John Rives* was seised in Fee, at the Time of obtaining such Judgment.

And therefore the now Defendant pleaded to the Bill of the now Plaintiff, that if the Plea at Law thus pleaded by the now Plaintiff (then Defendant) is true, he hath no Need of the Aid of this Court, and that his Bill tends to the falsifying his Plea at Law to the said *Scire Facias*.

Which Plea the Court allowed.

George

George Pitt, *Esq*; and the Lady Chandos his Wife,
Plaintiffs.

Richard Hill and Edward Broadway, *Defendants.*

Bill to discover a Title, the Defendant pleads two Verdicts, and Judgment obtained in Ejectment by his Father, and a Writ of Possession under which he claims; and the Plea was allowed.

THE Bill was, to discover *Mesne* Conveyances, and to examine Witnesses to perpetuate their Testimony, the *Lady Chandos* making a Title to the Lands by the Will of her former Husband.

The Defendant *Broadway* pleads, That his Father had obtained two Verdicts and Judgments (whereof one was at Bar) in Ejectment, and had Possession delivered by an *Habere facias possessionem*, and that he and his Father in Consideration of 2000*l.* had conveyed the Lands to *Sidenham* and *Brandford* in the Year 1658, and to their Heirs, and that this Defendant *Broadway*, together with the said *Sidenham* and *Bradford*, did afterwards in Consideration of 3000*l.* convey the Premises to the Defendant *Richard Hill* who now pleaded the said Verdicts and Judgments, and Execution and Purchase; and demands Judgment whether the Plaintiff shall be aided by this Court to impeach his Title.

The Court allowed the Plea, and dismissed the Bill with Costs.

Sir Thomas Nott, Administrator of the Lady Elizabeth his late Wife, Plaintiff.

Sir Henry Frederick Thinn, Thomas Thinn, Esq, Executor of Sir James Thinn, and Sir Thomas Thinn, and Roger Nott, Administrator of Sir Thomas Thinn deceased, Defendants. By Bill of Revivor

Bill against an Administrator of an Executrix for a Legacy given to the Wife of the Plaintiff, who by Articles was to make a Settlement of Lands, and Part of her Portion, on her; an Accompt was Decreed of the personal Estate of the Testator.

THE Case was, *Sir Thomas Thinn* the Elder, being seised of several Manors and Lands, &c. and possessed of a personal Estate to the Value of 80000*l.* and having made large Provision,

for the Defendants his Sons, and having only one Daughter, the said *Elizabeth* (married to the Plaintiff Sir *Thomas Nott*) to whom he by his Will devised 20000 *l.* and died, leaving *Katharine* his Wife Executrix, who, endeavouring to prove the said Will, was opposed by Sir *James Thinn*, and pending that Suit, Administration was granted to Sir *Henry Frederick Thinn*, who, by Virtue thereof, possessed himself of a great Part of that Estate.

That afterwards (*viz*) in *November* 1640, the said Lady *Katharine* came to an Agreement with the Plaintiff Sir *Thomas Nott*, by which he, by Articles between them, agreed to convey the Manors and Lands in the Bill, &c. to the Use of himself for Life, Remainder to the said *Elizabeth* for Life, Remainder in Special Tail Male to him and his said Wife, and to make up the Lands 500 *l. per Annum*, if they should fall short of that yearly Value, and thereupon the Lady *Katharine* agreed to pay the Plaintiff 10000 *l.* Part of the Portion of *Elizabeth* his Wife, and 5000 *l.* more as soon as the same could be raised out of Sir *Thomas Thinn*'s Estate, with which the Plaintiff (as soon as he received it, was to purchase 200 *l. per Annum* in Trustees Names, as the Lady *Katharine* should appoint to the same Uses and Trusts as the former Lands, and in the mean Time to be put out at Interest for the Benefit of the Plaintiff; and in Case *Elizabeth* his Wife should die without Issue, then the said 5000 *l.* and the Proceed thereof, was to be to the Use of the Plaintiff alone, and that the remaining 5000 *l.* as soon as the same was raised, should be disposed, that if the said *Elizabeth* should survive the Plaintiff her Husband, it should be absolutely for her self; and in the mean Time, and during his Life, she should have 250 *l.* every Year out of the Proceed thereof for her private Use, and the Overplus to the Plaintiff, but if he survived, then the said 5000 *l.* and the Proceed thereof, should be to his Use.

Pursuant to this Agreement the Lady *Katharine Thinn* paid the Plaintiff 9000 *l.* and gave him a Bond for the Payment of 1000 *l.* more, which she promised speedily to pay, but before the same, or the remaining 10000 *l.* was paid, she died, having made her Will, and the Defendant Sir *Henry Frederick Thynn* her Executor, who possessed himself of 5000 *l.* Estate, of which she was possessed.

Afterwards the Administration of Sir *Thomas Thinn*'s Estate was, by Agreement between Sir *Henry Frederick Thynn*, and his Brother Sir *James Thinn*, revoked, and a new Administration thereof granted to Sir *James Thinn*, whereby, amongst other Things, they possessed themselves of all Sir *Thomas Thynn*'s Estate, and ought to pay the Plaintiff the said 1000 *l.* so secured

cured to him by the Bond of *Katharine*, and the remaining 10000 *l.* to make up the Portion of the said *Elizabeth* his Wife, he the said Plaintiff being willing to perform the Agreement on his Part, pursuant to the Articles between him and *Katharine*, and to make a Settlement accordingly.

All which Matter being confessed by the Defendants in their Answer, but only that the Plaintiff had not made a Settlement of near 500 *l.* yearly, as he agreed to do, and that the Defendant Sir *Henry Frederick Thynn* had been plundered of Part of the Estate of which he had possessed himself, it being in the Civil War.

The Court decreed, that the 10000 *l.* be paid out of the Estate of Sir *Thomas Thynn*, to the Plaintiff (the 1000 *l.* being paid pending this Suit) and to that End an Account was directed thus;

ff. That Sir *Henry Frederick Thynn* account for the personal Estate of Sir *Thomas Thynn* deceased, which came to his Hands, or to the Hands of Dame *Katharine Thynn*, or any other to her Use, and not already disposed to discharge any of his Debts or Legacies.

That the other Defendant *Thomas Thynn* account for such Estate of the Testator Sir *Thomas Thynn*, which came to the Hands of Sir *James*, or young Sir *Thomas*, the Father of the said Defendant *Thomas Thynn*, so far as he hath Assets of their Estate, he being Executor to both of them.

And the Master to examine how much of the personal Estate of old Sir *Thomas Thynn* the Testator, came to the Hands of Sir *Henry Frederick Thynn*, or to Dame *Katharine Thynn*, and also what came to the Hands of Sir *James Thynn*, or to the Hands of his Brother Sir *Thomas Thynn* respectively, and what Assets the Defendant *Thomas Thynn* hath of the Estate of Sir *James* or Sir *Thomas Thynn* his Father, and to state the said Accounts separate, and if any of the Estate was taken away by Force and plundered, to state the same specially, &c.

Sir Thomas Trevor, Plaintiff.

*Susan Lesquire and Scipio Lesquire an Infant, &c.
Defendants.*

Demurrer to
a Bill for
Scandal to ba-
stardize the
Defendant,
&c. allow'd.

THIS was a Demurrer to a Bill for *Scandal* and *Impertinency*, the Intent of it being only to asperse and scandalize the Defendants, and to bastardize the Defendant *Scipio*, and to

to set aside and overthrow the Marriage of his late Father with the other Defendant *Susan*, his Mother.

First, That the Matter suggested concerns the Validity of a Marriage and Legitimacy of the Defendant *Scipio*, which is properly triable at *Common Law*, and not elsewhere; and for that, if the Defendant *Scipio* is illegitimate, as 'tis suggested, then *Edmund Lesquire*, for whom, and in whose Behalf this Bill is brought, may recover at Law.

And for a farther Cause of Demurrer, that if *Scipio* is a fictitious Son, and set up by the Defendant *Susan* on Purpose to prejudice the Title of *Edmund*, as is scandalously charged in the said Bill, the same is a great and notorious Crime, and the Defendant for that Reason not bound to make any Discovery thereof upon Oath, whereby to subject herself to the Penalty of the Statutes and Laws of this Realm.

And for that the said Bill is a scandalous and an impertinent Libel, and for other Causes and Imperfections and Errors the Defendant did demur to the whole Matter thereof.

Which Demurrer was allowed by the Court, and that the Bill be taken off the File and burnt.

Sir Christopher Turner and Sir Philip Warwick,
Plaintiffs.

Sir Oliver Boteler and divers others his Tenants,
Defendants.

THERE being great Differences between *Sir Oliver Boteler*, and Dame *Anne* his Wife, it was at last agreed, that she should have a separate Maintenance of 300 *l.* per *Annum* to be secured out of certain Houses in *Eagle-Court* in the *Strand*, which Agreement was confirmed by *Deed*, dated 22 *March* Anno 22 *Car. 2.* which was a Demise made by the said *Sir Oliver* to the Plaintiffs in Trust for the Wife, (*viz.*) that they should, out of the Rents and Profits thereof, pay unto her the clear yearly Sum of 300 *l.* or to such Person and to such Uses as she, during the Coverture, should by Writing direct and appoint; and for Default of such Appointment, then to pay the same into her own Hands by quarterly Payments, it being to be at her own Disposal, and as a separate Maintenance, and that *Sir Oliver* should not intermeddle therewith, but that the Residue of the Rents and Profits should be to his own Use.

A Deed, by which the Husband agreed to allow his Wife separate Maintenance, was confirmed by the Decree of this Court.

These Houses being in Lease to the Defendants, who were Tenants to Sir *Oliver*, the Trustees exhibited their Bill against them to discover upon what Terms, and under what Rents they held the same, that they (the Trustees) might be the better enabled to perform this Trust, and the rather, because they had refused to pay the Rents, and to attorn to them the said Trustees.

And some other Suits and Differences afterwards arising between the said Sir *Oliver* and his Lady in the Spiritual Court, upon his refusing to perform the said Agreement, and to make a farther Allowance towards the Maintenance of a Daughter, and defraying the Expences of her Suits, which had cost her more than 300 *l.* and likewise such another Sum (*viz.*) 300 *l.* in maintaining her Children, all which was submitted to the Award of the Lord *Shaftsbury*, and Secretary *Coventry*, it was consented, that a Decree of this Court, should pass, and accordingly a Decree was made by the Lord *Keeper Nottingham*.

That Sir *Oliver* should forthwith pay to his Lady, or to her Use, all the Arrears of the said 300 *l. per Annum*, and to continue the Payment thereof according to the said Deed, dated in *March 22 Car. 2.*

And likewise should pay her 80 *l. per Annum*, to be secured to the Trustees on the same Houses, and this for the Maintenance of his Daughter by quarterly Payments: the first Payment to commence from *Lady-day* last, and to continue till her Marriage, and that she shall live and continue with her Mother, and be educated by her.

Decreed likewise, that Sir *Oliver* consent to a Sentence of Separation in the Spiritual Court, and thereupon the Excommunication he lies under to be absolved, and he to be at the Charge of both.

And that Sir *Oliver*, the better to secure the said Payments, shall deliver into this Court all the Counterparts of his Tenants Leases for the equal Benefit of all Parties, and the Tenants shall attorn to the Trustees, but Sir *Oliver* shall have Power to renew and to let new Leases, according to the Deed of separate Maintenance, and to receive the Rents of the Tenants until he shall make Default of Payment of the said yearly Sums, and the Trustees to execute a Counterpart of such Deed of separate Maintenance, and a perpetual Injunction to stay all Proceedings in the Ecclesiastical Courts, and in the Delegates, for *Alimony*; and Sir *Oliver* not to disturb the said *Anne* in her Person, or meddle with any Goods she shall acquire during the Separation, or which she shall use for her Conveniency.

William and John Penrice, *Executors of John Penrice their Father, Plaintiffs.*

William Parker, *Esq; Defendant.*

THE Plaintiffs by their Bill demand 200 *l.* which they affirm the Defendant agreed to give their Father, (who was a *Counsellor at Law*) for his Advice and Pains in several Causes, in which the Defendant was concerned.

The Executors of a Counsellor at Law, bring a Bill for a Sum in gross, for Advice

and Pains taken by their Father, in Causes in which the Defendant was concerned. The Defendant Demurs for that 'tis within the Statute of Maintenance, for a Counsellor to contract for a Sum in gross, for Fees to be paid upon the Event of any Cause; the Demurrer was good.

To which the Defendant demurred, and for cause shewed, that if he should answer the Bill, it would draw him under a Penal Law, it being against the Course of all Courts of Justice for any Counsellor at Law, to make such a Contract as in the Bill is suggested for his Fees in a gross Sum, to be paid upon the Event of any Cause. Therefore this is a Bill of such a Nature, as ought not to have any Countenance in a Court of Equity.

The Court allowed the Demurrer.

The Portreeve and Burgesles of Chard, in Com. Somerset, and the Churchwardens and Overseers of the Poor there, and William Bragg, Plaintiffs.

Richard Opie, *Defendant.*

THIS Suit was, to recover a Charity given to the Poor of the said Town of *Chard*; the Case was thus:

Devile of a Copyhold to a Charity, good, tho'

not surrendered to the Use of the Will, for 'tis a good Appointment within the Statutes of charitable Uses.

¶ *Richard Harvey* being seised of several Freehold and Copyhold Lands in the Counties of *Norfolk* and *Cambridge*, (but not having surrendered the Copyholds to the Use of his Will) did about *July* 1663, devise the same to his Uncle *Abraham Holditch* for Life, with a Power to make farther Estates thereof, until 450 *l.* be raised towards Satisfaction of his Debts due to his said Uncle, and to recompence him for his Charges and Industry, in recovering and settling the said Lands upon him, (the Testator) and

after his Death, and the said Sum of 450*l.* raised, then to *Elizabeth* the Wife of the said *Abraham Holditch* for her Life, Remainder to the Issue Male of their two Bodies, Remainder to *Elizabeth* their Daughter for Life, (provided the said Estates be subject to the Payment of all his other Debts and Legacies) Remainder to the Town of *Chard*, (being the Place of his Birth) to build an *Hospital*, whereof he appointed the Plaintiff *Bragg* and others, Guardians and Overseers for such a Number of Poor as named in the said Will.

That all the Estates, limited to *Holditch* and his Wife and Children, were all determined by their several Deaths without Issue; and that *Bragg* is the only surviving *Guardian*; and that the Defendant *Opie* was in Possession of the Lands, and had the Deeds and Writings concerning the same, pretending a Title by *Mortgage* and other Conveyances from *Richard Harvey* the Testator's Uncle; though if any such Mortgage was made, it was assigned to the said *Opie and Holditch*, and kept on Foot for the Benefit of the Testator, and hath been long since satisfied, for that the Possession of the Lands in the said pretended Mortgage was by an † *Award made between the Testator and his said Uncle Harvey*, delivered to him, (the Testator) and he continued in the Possession thereof during his Life, without any Claim, from or by the Defendant *Opie*, or any other Person, till many Years after his Death, &c.

† An Estate was awarded to the Testator, who had Possession pursuant to the Award, and devised it amongst other Things to a Charity; and the Defendant having Notice of the Award, and the Devise, purchased it; the Purchase is not good.

The Defendant *Opie* denied that the Testator had any Freehold or Leasehold Lands in *Cambridgeshire*, but admitted there were some Copyholds there, which were *not surrendered to the Use of Richard Harvey's Will*, which therefore descended to his Uncle *Harvey* as next Heir; who being seised in his own Right of the said Copyholds, and possessed of the Equity of Redemption of a Lease of other Lands there held of *Christ's College in Cambridge*, the Freehold and Leasehold being in Mortgage to one *Benjamin Layer*; he this Defendant purchased Part of the Freehold of *Richard* the Uncle in the Year 1664, for which he paid 130*l.* and having paid other Sums for redeeming the Mortgage, he the said *Opie* in Consideration thereof had a Conveyance made to him of the Freehold, and an Assignment of the Leasehold, and the Equity of Redemption of *Layer's Mortgage*: And the Term of the *College Lease* being near expired, the said *Opie* renewed the same, for which he paid 32*l.* and 17*s.* for *Richard* the Uncle's Admittance to the Copyhold, and took a Conveyance of the Leasehold from one *Loosemore* and his Wife, she being the Executrix of the Mortgagee *Layer*, for which he paid 94*l.* &c.

That on the 28th of September 1666. *Abraham Holditch* granted to *Opie* all the Freehold Estate in *Norfolk*, for the Consideration aforesaid, and this was for the Term of 2000 Years, and devised to him the *Norfolk Copyhold*, being about 7 or 8*l.* per Ann.

Ann. and both these Estates are let to one Tenant, and are (as pretended) so intermixed, that the Copyhold cannot be distinguished from the Freehold; and it was by his Counsel insisted, that the Freehold of the Premises ought not to come to the Plaintiffs till the said Two thousand Years are expired, or otherwise determined, or at least not until the 450*l.* devised to *Abraham Holditch* with Interest, and all other Debts and Legacies of the Testator are satisfied and paid.

Nota, the Award aforesaid was made in *October* 1658, and it was that *Harvey* the Testator should pay to his Uncle and to *Joan Harvey* 20*l.* a Year for Life, and 320*l.* which the Uncle had borrowed of *Laver* upon the aforesaid Mortgage; and that before the 29th of *September* 1659, the Uncle should assign and surrender to the Testator, all the Leasehold, Freehold, and Copyhold Lands in *Cambridgeshire*, except such as he had conveyed to any Person before *September* 1658, and all his Right in Law and Equity, and to sign Releases for all Matters before *Michaelmas* 1668.

Now it was insisted on the Part of the Complainants, that there was no Surrender of the Copyhold Lands in *Cambridgeshire*, to the Use of *Richard Harvey's Will*; yet that it was a good Appointment within the Statutes of *charitable Uses*, for the Use of the Poor; and that by the Award, the Testator was entitled in Equity to the whole Estate in *Cambridgeshire*; and that there ought to be an Account taken accordingly, the Defendant having full Notice of the said Award and Will before his pretended Purchase.

The Court decreed, that the Poor ought to have Relief in this Case, and that it ought to extend to all the Estate both in *Cambridgeshire* and *Norfolk*, especially since the Purchase made by the Defendant was after Notice of the Award, and in Defiance of it.

Sir William Powell, Baronet, Plaintiff.

John Godsale, Defendant.

THE Bill was, to be relieved against a Bond of 900*l.* Penalty; A perpetual Injunction granted against an old Bond of 50 Years stand. ing. conditioned for Payment of 600*l.* and which was given above Fifty Years since by Sir Peter Vanlore deceased, (as Surety for and with one Philip Burlemach) to James Godsale the Defendant's Grandfather, the Plaintiff being in Possession of the

*J.C. by name of
Godsale Godsale
v. Powell
H. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

& after this first decree Lord Hall had
 set up an action, the Commission & sued
 him upon the bond, & obtained a second
 decree, & then exhibited a second bill
 against Sir Wm Powell to discover effects of
 Sir Peter V. & this being discovered
 in a plea, the plea was
 the bill dismissed; for Sir
 to be apparent to collection
 between
 the adm. & the
 bond in
 to undertake
 the first
 decree, &
 oblige
 to impede
 Sir W. Powell
 again on
 the bond.
 Sir W.

the Lands by several Mesne Conveyances and Assignments from
 the Lady Powell, (the same having been formerly Part of the
 Estate of Sir Peter Vanlore) and by him granted to others to
 pay his Debts and Legacies, the Defendant now endeavouring
 to charge the Plaintiff as *Executor of his own Wrong*, and to
 make the Premises *Assets*, though in Probability this Bond had
 been long since satisfied, being so old, and *Sir Peter* only a
Surety for another, who afterwards lived many Years in great
 Credit, and the Bond never put in Suit till now, though the
 Defendant pretended it was delivered to an Attorney about thir-
 teen Years since for that Purpose; but he died in the Sicknes
 Year.

According to Lord Nottingham's own report, Sir Wm Powell had been discharged
 from the bond by a decree of equity in a previous
 suit, & the such decree was founded upon facts
 in favor of Sir Wm Powell as executor of his own wrong
 to Sir Peter V. the surety was considered on the antiquity
 of the bond & other reasons.

George Steers and others, Exceptants.

George Burt and John Holland, Respondents:

Decree of the Commis-
 sioners of
 charitable
 Uses con-
 firmed by the Court upon Exceptions taken to the said Decree.

THIS came before the Court upon Exceptions to a Decree
 made by the Commissioners for *charitable Uses*, wherein
 the Case was thus.

ff. George Steers, late Rector of the Parish Church of *Newdi-
 gate* in the County of *Surrey*, did by his last Will give the
 yearly Rent or Sum of 10 l. per *Annum* for ever; issuing out
 of certain Lands in *Surrey*, towards the Maintenance of a young
 Scholar in *Trinity College* in *Cambridge*, which he directed
 should be chosen by the Ministers, for the Time being, of the
 respective Parishes of *Newdigate*, *Oakley* and *Darking* in the
 said County, and of *Ruspur* in *Suffex*, or the major Part of
 them; and that the Scholar so to be chosen should have the said
 10 l. per *Annum* for four Years, and then another to be chosen,
 and so successively one after another for ever; and the Scholar
 to be of the Parish of *Newdigate*, if any such may be found; and
 if not then to be the Son of some Poor godly Parents within 15
 Miles of *Newdigate*, in the respective Counties of *Surrey* and
Suffex.

And

And whereas *William Tendone*, the last Scholar, had received this Exhibition for four Years, which Time is now expired (*viz.*) about *Michaelmas* 1671, and the Electors being equally divided about the Choice of another, two of them being for *Burt* the Respondent, and the other two for one *Ward* in the Exception named.

Thereupon a *Commission of Charitable Uses* was sued out, directed to several Gentlemen in *Surrey*, who decreed, that the four Ministers should meet again within a Month, &c. and proceed to the Choice, and if they disagreed, then the *Bishop of Winchester* should chuse one, and in Case of a Vacancy of the Bishoprick, then the *Guardians of the Spiritualties* to chuse one for the Purpose aforesaid; and they decreed 10*l.* of the Arrears of the said yearly Rent that should incur between the Vacancy of a Scholar and the Election of another, should be paid to *John Holland* for the Charges he had sustained in the Suit of the said Commission, and the Residue of the Arrears to be paid to the next Scholar who shall be chosen.

The four Ministers met again, but were still divided, and thereupon the *Bishop of Winchester* chose *Burt*, as appears by an Instrument under his *Episcopal Seal*.

1. The First Exception was, that the *Commissioners of Charitable Uses* had no Power to appoint the *Bishop of Winchester* to chuse this Scholar, nor the Guardian of the Spiritualties, *Sede vacante*.

2. The second Exception was, that *Burt* the Scholar, thus chosen by the *Bishop*, is the Son of poor Parents in *Guilford*, about 15 Miles from *Newdigate*.

3. The third Exception was, that the Commissioners have no Power to dispose of 10*l.* Arrears of the said Annuity, in Manner as aforesaid.

These Exceptions being debated by Counsel on both Sides, were over-ruled by the Court, and the Decree confirmed.

Richard

Richard Tyler, *Gent. Plaintiff.*

Sir William Beversham, Defendant.

Bill to be re-
lieved a-
gainst a Ver-
dict and
Judgment in
Ejectment
for a Farm,
which the
Purchaser
of the Ma-
nor would
have to be
compre-

THIS Bill was, to be relieved against a Verdict and Judgment in Ejectment for a Messuage and Lands called *Jenner's Farm*, held of the Manor of *Holbrook*, for which Manor the Defendant agreed to give 4000 *l.* and for which Purpose Articles were sealed, and a Particular delivered by the Plaintiff of every Parcel of the Lands, with the Abuttals and Boundaries, and afterwards a Conveyance was executed thereof, and 4000 *l.* was paid, and the said Manors and Lands were quietly enjoyed by the Defendant, and *Jenner's Farm* by the Plaintiff.

hended under general Words in the Purchase-Deed, but were never mentioned in the Particular given before the Purchase was made, but enjoyed by the Vendor several Years after the Sale of the Manor. The Plaintiff was relieved.

But the Defendant complaining, by a former Bill in this Court, that the now Plaintiff had infranchised some Part of the Copyholds held of the same Manor, of which he was seised before the now Defendant had purchased the Manor, and the now Plaintiff, by his Answer to that Bill, said, that he, in the Rental given by him to the now Defendant, had made himself Tenant for 4 *s.* 8 *d.* Quit-Rent, and that he bought *Jenners Farm* two Years before he bought the Manor, and did infranchise the same, but was ignorant thereof until he was informed by the Defendant, and therefore offered to become Tenant to him at the same Rent, or in the same Quality, or to make him any other Satisfaction for the same, in which Cause the now Defendant did not think fit to proceed.

But taking Advantage of the general Words in the Conveyance made to him of the said Manor (*viz.*) *with all its Rights, Members and Appurtenances*, would thereupon include *Jenner's Farm*, or at least so much thereof as was *Copyhold and held of the said Manor*, tho' the same was never agreed or intended to be sold and conveyed with the said Manor, nor mentioned in the Particular, and yet the Plaintiff hath offered to make any reasonable Satisfaction for the said Infranchisement, with Costs and Charges at Law in obtaining that Verdict in Ejectment; but the Defendant pretends, that he was circumvented, and that the Particulars of his Purchase were not true, but the Plaintiff, by his Counsel, insisted, that tho' there might be a Mistake, and the Defendant not well used in this Purchase by relying on the Particular given in by the Plaintiff, and by trusting too much to him; yet it appeared by the Confession of the Defendant himself, and by the

Parti-

Particular, and by the Deed of Purchase itself, that there was no Contract made for *Jenner's Farm*, neither was it valued, or intended to be sold, or mentioned in the said *Particular* or Purchase-Deed, and it being fully proved, that the Plaintiff enjoyed the said Farm (being 24 *l. per Annum*) above 6 Years after the said Purchase of the Manor.

The Court was of Opinion, that the said Farm could not, in Reason or Justice, be accounted *Part of the Manor*, and thereof declared, that the Plaintiff was intitled to Relief; and decreed, that he should enjoy *Jenner's Farm*, with the Appurtenances, and that the Defendant regrant the same to the Plaintiff in such Manner, as such Part of it, which is Freehold, may be held by the Plaintiff and his Heirs, and such Part of it, which is Copyhold, may likewise be held by him and his Heirs, but subject to such Rents, Duties, and Services, as before the Plaintiff purchased the said Manor, and that the Plaintiff shall pay to the Defendant all Arrears of Rent for the said Farm, since the Purchase of the Manor by the Defendant, and a perpetual Injunction to stay the Defendant's Proceedings at Law, &c.

Humphrey Wharton, *Esq;* Exceptant.

Charles and others, in Behalf of the Poor of Warcup and Blebarne in the County of Westmorland, Respondents.

THERE being an Annuity of 3 *l.* 6 *s.* 6 *d.* issuing out of a Close called *Meadow Powes* in *Kirby Thorien* in the said County to several Charitable Uses, which Close was purchased by the said *Humphrey Wharton* the Exceptant, and, as he pretends, *without Notice of the Charity*.

Decree of the Commissioners of Charitable Uses for Payment of Costs, &c. reversed.

The Commissioners for Charitable Uses decreed, that the Exceptant should pay to certain Persons (in the said Decree named) the Sum of 76 *l.* 13 *s.* 4 *d.* Arrears of the said Annuity, and 6 *l.* 13 *s.* 4 *d.* Costs.

This Exceptant excepts to the Money for Costs, as not within the Power of the Commissioners to decree.

And offers to pay the Arrears of the Annuity from *John Wharton's* Death, of whom he purchased the said Close, and redemised it to him for Life, so as he may be discharged of the Arrears incurred before, that being the first Time (*viz.*) after the Death of *John Wharton*, that this Exceptant had the actual Possession of the said Close, which was decreed accordingly.

And as to the Arrears incurred before *John Wharton's* Death, and the 6 *l.* 13 *s.* 4 *d.* Costs, this Decree, as to so much thereof, was reversed.

M

William

William Legard *and* Grace *his* Wife, *Plaintiffs.*

John Foot, *Defendant.*

Bill to discover several Matters, &c. the Defendant pleads, that he was Attorney, &c. in several Causes, and faithfully managed the Affairs of

THIS was a Bill to discover several Matters relating to the Estate and Affairs of one *Nicholas Cossens* deceased; to which the Defendant pleads, that he was employed as Attorney and Solicitor for the said *Cossens* in several Causes, and in several Courts, and that he faithfully managed the said Causes for his Client, and ought not to make any Discovery thereof to the Plaintiff, in Regard he was not a Party to any of the said Causes, neither is the Plaintiff capable in any Sort to call the Defendant to Account concerning the same.

his Client, and ought not to discover them.

Another pleaded to a Bill of Discovery, that the Lands were devised to him, and that the Plaintiff hath Remedy at Law. Both Pleas were allowed.

The same Persons were Plaintiffs against *Thomas Cossens*, Defendant, who pleaded to their Bill of Discovery of several Deeds and Writings, which they claim as belonging to several Manors and Lands, &c. that *Nicholas Cossens* devised the said Lands to him by Will, which is duly proved; and that if the Plaintiff hath any Remedy 'tis at Law.

The Court allowed both these Pleas.

Anthony Weston *and* Sarah *his* Wife, *Plaintiffs.*

Richard Keighley, *Defendant.*

Two Joint-tenants for Life; one of them exhibits a Bill, to which the Defendant demurred, for that the other was not made a Party.

THE Plaintiffs, by their Bill, demand an Account of the Rents and Profits of a Messuage in *Rygate*, setting forth, that *Stephen Baker*, Father of the Plaintiff *Sarah*, devised the Premises to his 2 Sons and their Heirs lawfully begotten; and that if they die without Issue, then to his 2 Daughters, *Sarah* and *Alice*, and that both the Sons are dead without Issue, &c. to which Bill the Defendant demurred; for that it appears by the Plaintiff's own shewing, that the Plaintiff *Sarah* and *Alice* her Sister, are Jointenants for their Lives, and that they have not made *Alice* a Party, and it doth not appear by the said Bill, but that *Alice* is still living, and hath a joint Interest in the Premises with the Plaintiff during der Life.

The Court allowed the Demurrer.

William Naylor and others, Plaintiffs.

John Brown, late Master of the Company of Woodmongers, Sir Edmund-Bury Godfrey, William Fellows and others, Members of the said Company, Defendants.

*See 1. Lev. 237.
a case at law
of the same Company
in relatⁿ to the
same transaction.*

J. S. Holt in Mr. Rep. 4. 55. & 555. of Mr. Legge's copy.

THE Plaintiff Naylor having lent the Company of Woodmongers 500*l.* they gave him a Bond of the Penalty of 1000*l.* under their common Seal, conditioned for the Payment of 500*l.* and Interest, and the said Company assigned another Bond of 1000*l.* due to them, and this was to Sir William Wild for the Payment of some of their Debts, and Sir William declared the Trust as to 620*l.* Parcel thereof for Sir Edmund-Bury Godfrey, and for twelve others therein named, and the rest for several Members of the Company.

A Trust of a Company's Money declared to Strangers and not of the Company, but the Trustee having no Power to declare such Trust for any of the

Creditors by any corporate Act, such Declaration of Trust is void, and the Money is still in Equity their Money, and shall be subject to pay their Debts due to Strangers, before their Debts due to any of their own Company.

Afterwards a *Quo Warranto* was brought against this Company, and they were dissolved, having forfeited their Charter, and then they parted Stakes amongst themselves, and some few others carving large Shares out of their whole Estate to some of their own Members, who pretended great Debts due to them; and left the Plaintiff Naylor's Debt, and some other Creditors, who were now Plaintiffs unsatisfied.

The Court upon hearing this Cause did not approve these Proceedings of the Company towards their Creditors, especially towards such who were not Members of the Company, with whom they dealt, as Bankrupts usually do, who knowing they shall break, pay such Friends as they like best.

And it appearing that the Company had borrowed more of Strangers than the said 1000*l.* would reimburse, (of which the Plaintiff Naylor's Debt of 500*l.* was Part) the Distribution of that Sum amongst particular Members of the Company was injurious to such Creditors who were not Members thereof; it being more reasonable, that if Losses must fall upon the Creditors, such Losses should be born by those who were Members of the Company, who best knew their Estates and Credit, and not by Strangers who were drawn in to Trust the Company upon the Credit and Coun-

By the Civil Law the Goods and Rights of a Corporation belong in such Manor to the corporate Body, that Particulars Persons who are Members of

it have no Manner of Right or Property in them, or can dispose thereof, because Corporations are perpetual, and supported for the publick Good, therefore their Goods and Rights which are their support ought to be unalienable. But where the Corporation is dissolved, these who are Members of it, may take out what they had of their own in the Corporation. Dom. 2. Vol. 477.

tenance it had from such particular Members; and which in this Case was more remarkable, because several of the principal Members of the Company had set their Names to the Plaintiffs Bond of 500 *l.* under the common Seal, which though it did not legally bind them in their private Capacities, yet it was certainly an Inducement to the Plaintiffs to lend their Money.

The Court was of Opinion that the *Declaration of the Trust* by *Sir Wm. Wild* was utterly void as to the said 620 *l.* for that the Corporation did not join therein, nor give him any Authority under their common Seal, or by any corporate Act to make such a Declaration.

And therefore decreed that the Defendant *Sir Ed. Bury Godfrey*, and the other Defendants Members of the said Company, who have received any Part of the said 620 *l.* by Virtue of such Declaration of *Trust*, do pay back the same with Interest; it being in Equity still, a Part of the Estate of the late Company, and that for this Purpose they come to an Account before a Master, and that the Plaintiffs Debts be first paid together with Damages and Costs, so far as the Estate of the late Company will extend; and that if that Estate shall not be sufficient, then the Debts are to be paid in Proportion, &c.

John Magson and Katharine Sittwell, *Widow and Administratrix* of Francis Sittwell, *Esq;* deceased, Plaintiff.

Sir Francis Fane the Elder, Sir Francis Fane the Younger, Sir Robert Clayton, and Willoughby West, and Duck and his Wife, and others, Defendants.

There being
950 *l.* agreed
to be paid
by the Ven-

THIS Bill was exhibited, to be relieved against Suits at Law, and to have Articles performed. The Case was thus. dees to the Vendor, and 500 *l.* Part thereof, being paid by his Order to a Bond-Creditor, and the Bond not cancelled, but assigned to the Vendee, and more Money being likewise paid by the Order of the Vendor to another of his Creditors, who took Security to repay it on certain Conditions, this was decreed to be no Payment to the Vendor so long as the Securities which he had given were kept on Foot, and not delivered up and cancelled.

ff. Francis Sittwell and *Magson* were in Treaty with *Willoughby* and *West* (Agents for *Sir Fra. Fane* the Elder and Younger) for the Purchase of some *Woodlands* in the Bill mentioned, and Articles for that Purpose were sealed by all the said Parties (except

Sir Francis the Younger) dated the 14th of *March* 1668, but *Sir Francis the Elder* undertook that *Sir Francis the Younger* should seal, &c. and for this *Sittwell* and *Magson* were to pay 500 *l.* before *July* then next, and 450 *l.* more before the last Day of *January* 1669, and the *Articles* being thus sealed by *Magson* and *Sittwell*, and a Bond given for the Performance thereof, they cut down some Timber and Wood, &c.

In *July* 1669, *Magson* paid 200 *l.* to one *Mason* for a Bond-Debt of the *Fanes*, or one of them, and by their Order, and *Sittwell* paid to one *West* 300 *l.* more by their Order; but *Magson* took an Assignment of *Mason's* Bond, in which *Sir Francis Fane* was bound, and kept it uncanceled on purpose to put it in Suit, if there should be Occasion, and *Sittwell* took Security of *West* to repay the 300 *l.* on certain Conditions, &c.

Thereupon *Sir Francis Fane* taking this to be no Payment of the 500 *l.* put the Bond in Suit, which *Magson* and *Sittwell* had given for the Performance of these Articles, and got Judgment, and now insisted upon the Forfeiture, and interrupted them in cutting and carrying away the Timber.

And the Court declared there was no Cause to relieve them against the Forfeiture, unless they pay to the Defendants their Costs and Interest for the 500 *l.* and 450 *l.* after the Time it became due, for that the Money so paid to *Mason* and *West* was not an absolute Payment, so long as the Bond so assigned by *Mason*, and the Security given by *West* were not delivered up to be cancelled.

Thereupon it was decreed, that the Defendants should have their Costs and Damages to be computed by a Master from the Time that the same became payable.

And that the Plaintiffs deliver up the Bond and the Assignment thereof made by *Mason*, and the Security given by *West*, and in so doing, and upon Payment of the Residue of the Sum of 950 *l.* to the *Fanes*, they are to deliver up the Counterpart of the Articles, and the Bond of 950 *l.* for the Performance thereof, and acknowledge Satisfaction on the Judgment they have obtained on the Bond; but if they fail, &c. then the *Fanes* are at Liberty to proceed at Law on the Bond.

Henry Woodward, *Plaintiff*.

Edward *Earl* of Lincoln, Edward Sharp, and John Whalley, *Defendants*.

The Lessor granted a Lease for 21 Years under a certain yearly Rent, and covenanted to repair and to allow, and pay all Taxes which he did not do in his Life-time; and upon a Bill brought against his

THE Case was, *ff. Theophilus, late Earl of Lincoln*, did in the Year 1660, in Consideration of 50*l.* demise to the Plaintiff the Messuage and Lands in the Bill mentioned, and this was for the Term of 21 *Years*, at and under the yearly Rent of 45 *l.* and the Lessor was to repair, and in Default thereof the Lessee might do it, for which he was to be allowed by the Lessor; and the Plaintiff being in Possession by Virtue of this Lease, the said *Earl of Lincoln* did, in May 1661, in Consideration of 110 *l.* paid to him by the Plaintiff, demise the said Messuage and Lands, and some other Lands, to him the said Plaintiff for 21 *Years*, at the yearly Rent of 90 *l.* with the like Covenants on the *Earl's* Part to repair as aforesaid, and to pay 2 Parts in 3 of all Taxes.

Grandson and Heir to make Allowances for Repairs and Taxes, it was decreed that he being only Tenant for Life, is not liable to make good the Covenants of his Grandfather.

That the said *Earl* did not repair, but it was done by the Plaintiff which cost him 150 *l.* and that it cost him 200 *l.* more in meliorating the Premises, and 100 *l.* and upwards in Taxes; and that the *Earl* died before he made any Satisfaction to the Plaintiff for the Repairs or Taxes.

That *Edward Earl of Lincoln*, the now Defendant, is his Son and Heir, to whom the Plaintiff hath paid his Rent, who refuses to make any Allowance to the Plaintiff, for the Charges he hath been at in Repairing, or for the Taxes; but hath brought an Ejectment to recover the Possession, the Plaintiff not paying the Rent on the very Day it became due, and hath made Distresses, and hath received Rents of some of the Plaintiffs Under-tenants.

And it appearing by the Answer, that the present *Earl of Lincoln*, the Defendant, is only *Tenant for Life* of the Premises, and so not liable to make good the Covenants of *Theophilus* his Grandfather.

The Court decreed, that he is not chargeable with the Repairs and Taxes, and other Defalcations in the Time of his Grandfather; but since his Uncle's Death, and directs an Account accordingly, and the Master to make Allowances from that Time as to Taxes, and other just Allowances; and that the Plaintiff shall be relieved against the Forfeiture of the Lease, and the now *Earl* to make a new Lease to him with the usual Covenants; and if the Plaintiff shall fail to pay what the Master shall report to be due to the *Earl*, at the Time and Place appointed for Payment thereof, then the Bill to be dismissed.

Stephen

Stephen Sowton, *Plaintiff*.George Spry, *Defendant*.

THERE being several Differences between the Plaintiff and Defendant concerning the Repairs of the House, in which the Plaintiff had an Estate for Life, the same were referred to the Arbitration of one *Tooker*, who was chosen by the Defendant, and one *Reynolds*, chosen by the Plaintiff, who entered into a Bond of 50 *l.* to repair the Houses before the 25th of March 1668, and the Sufficiency of the Repairs was to be adjudged by the said Arbitrators; afterwards, and before the 25th of March, the Plaintiff did repair the House, and sent to the Arbitrators to view it; *Reynolds* came, but *Tooker* refused, and *Reynolds* declared, that the House was well repaired, yet the Defendant brought his Action; and the now Plaintiff, being not well advised, did plead, that he had sufficiently repaired the House, but failed in his Proof, that being made by *Reynolds* alone, when both he and *Tooker* were made Judges thereof by the Bond, so that not having *Tooker's* Evidence the Plaintiff in that Action had a Verdict; but the Judges made a Rule of Court to refer the Matter to one *John Nicholls*, to see if the House was sufficiently repaired, and to make his Award, and that the Verdict should stand as a Security for the Performance; *Nicholls*, upon View of the House, declared, that it was sufficiently repaired, but made no Award in Writing.

The Plaintiff entered into a Bond of 50 *l.* sufficiently to repair a House by such a Time, and he and the Defendant made two Arbitrators to be Judges of the Sufficiency of the Repairs; one of them alone declared, that it was sufficiently repaired; but in an Action brought upon this Bond, his Evidence was not allowed, because both were made Judges of it.

Where there are several Arbitrators they must all agree in the Award; for tho' the greater Part make an Award, yet if one is absent the Award is void, because the absent Person being made a Judge, it may be intended, that if he had been present he might have been able to bring the Arbitrators to his Opinion, if he differed from them. *Dom. 1 Vol. 226.*

Thereupon the Plaintiff, in that Action, entered the Judgment, and had 15 *l.* Costs taxed; and, upon a Motion made in the Court of *King's Bench*, there was a Rule, that if the Defendant in that Action paid the Costs taxed, no Execution should go out; but, because the Costs were not speedily payed, the Plaintiff took out a *Fieri facias*, and levied at one Time 23 *l.* and afterwards 65 *l.* more, which being an Oppression, the Plaintiff exhibited his Bill to be relieved.

And the Court decreed the Defendant to repay whatever he had levied upon the Plaintiff, more than the 15 *l.* for the Costs taxed by the Secondary, and that the Master do tax the Plaintiff his Costs to be paid by the Defendant.

Sir

Sir Robert Bells and others, Plaintiffs.

Sir John Bells and others, Defendants.

Trust for
raising Por-
tions and
Maintenance
for Children
and for Pay-
ment of
Debts by
Sale of
Lands: The
Maintenance
of the Chil-
dren shall be
paid for be-
fore the
Debts.

THE Bill is to have a Trust for *Portions* and *Maintenance of Children*, and for *Payment of Debts*, performed by Sale of Lands, &c. and the Question being which should be first paid, the *Lord Keeper Bridgman* decreed, it should be *pari passu*; but upon a Rehearing before the *Lord Keeper Nottingham* it was decreed, (*viz.*) that the Children's *Maintenance of 30 l. per Annum, being three in Number, should be first paid*, and an Account directed accordingly; and that what remains in the Trustees Hands over that, (which they have either received, or might have received, without wilful Neglect, out of the Profits) be brought into Court, to be applied towards Payment of Debts in the first Place, and the Lands to be sold within six Months by the Trustees, or in Default thereof the Creditors or Children may procure and propose a Purchaser, and the Money by Sale of the said Lands to be brought into Court; first to pay the Creditors, and the Residue to pay the Children's Portions, as the Court shall direct.

William Blondell and Jane his Wife, Plaintiffs.

William Pannett and John Pannett, Defendants.

Bill to dis-
cover a per-
sonal Estate
and Will;
the Defen-
dants demur,

THIS Bill was, to have a Discovery of *John Pannett's Estate*, and likewise of the Estate of the Defendant *Jane's late Husband*, and to discover the Contents of this Will. The Defendants demur, for that the Plaintiffs are neither Creditors or Legatees, and that the Defendants have proved the Will, and if not duly proved the Plaintiffs have a Remedy in the Spiritual Court.

To which the Defendants demurred, and for Cause say, that it appears by the Plaintiff's own Shewing, that the Defendants and *John Pannett* the Elder have proved the said Will, and that if the same is unduly proved, then the Plaintiffs have a proper Remedy in the Spiritual Court, and by the *Civil Law* to avoid the Will, and cannot till then intitle themselves to an Account of the personal Estate, there being not any Allegation in the Bill, that they, or either of the said Plaintiffs, are Creditors or Legatees; and that if the Plaintiff *Jane* was Executrix thereof,

thereof, yet the Plaintiffs are not intitled to the personal Estate, until the Will is proved and the Execution thereof by the Plaintiffs.

The Court allowed the Demurrer.

John Crisp and Thomas Crisp, Esq; by Bill of Review, Plaintiffs.

Matthew Bluck, Esq; Defendant.

BILL of Review to reverse a Decree, wherein the Case appeared to be thus; (*viz.*) Sir *Nicholas Crisp*, the Plaintiff's Father, and several others, were bound in a Bond of 1600*l.* Penalty to the Defendant *Bluck*, for Payment of 100*l.* which coming due at *Michaelmas* 1662, and not being paid, the Bond was put in Suit, and Judgment obtained against Sir *Nicholas Crisp* alone for the Principal and Interest, amounting at that Time to more than the Penalty of the Bond; after this Action brought by the said *Bluck* he received several Sums of Money in Part, and in a former Suit between these Parties it was decreed, that what Money the Obligee had received before the Judgment was entered, should go in Discharge of the Interest of the 1000*l.* original Debt, and that after the Judgment was actually entered, then the Obligee should be satisfied, and paid the whole Money recovered, with Damages from the Time the Judgment was entered, deducting what he had received since the Judgment was entered.

Judgment was had for Principal and Interest due on a Bond; decreed, that what Sum the Creditor had received before the Judgment was entered, shall go in Discharge of the Interest, and what he received after the Judgment entered, shall go in the first Place to discharge the Interest, and then to sink the Principal.

Now this Judgment being entered in *Michaelmas-Term* 1662, and 250*l.* being received by the Obligee in *November following*, this was by the Master accounted *Interest* of the original Debt, and not towards the Money recovered by the Judgment, and the Error assigned was, that the Judgment being entered in *Michaelmas-Term*, that must relate to the *first Day of the Term*, therefore what Money was paid after that *first Day*, ought to be applied towards Satisfaction of the Judgment, which the *Lord Shaftsbury* decreed accordingly; and that what other Money was paid by any other of the Obligors on the Bond in Question, or by their Heirs, &c. since 20 *October* 1662, should be applied in farther Satisfaction of the said Judgment; first to discharge the *Interest*, and then to sink the *Principle*.

Upon an Appeal to the *Lord Keeper Bridgman*, so much of the said Decree (by which it was ordered, that what Money was paid after the *first Day of Michaelmas-Term* should be applied towards Satisfaction of the Judgment) was reversed, and

N

that

that the Defendant should not account for any Money received on the Judgment till it was actually entered, which last Decree upon this Bill of Review before the *Lord Nottingham*, was confirmed, the same having been settled, examined and decreed by so many Decrees, and therefore dismissed this Bill of Review.

John Feilder, *Plaintiff*.

Benjamin Studley, *Defendant*.

The Plaintiff was relieved against a Covenant in a Deed, by which he sold a Parsonage, &c. and covenanted against his own Acts, but in one Covenant he did set forth, that he had an absolute Power to convey to the Vendee and his Heirs, which was contrary to the true Intent of all Parties.

THE Bill was, to be relieved against an Action at Law brought by *Studley* the now Defendant, as Executor to his Father *Giles Studley*, grounded on general Words in a Covenant in a Deed made by the Plaintiff *Feilder*, dated in *March 1659*, wherein the Plaintiff *Feilder*, in Consideration of 500 *l.* paid to him by the said *Giles Studley*, did convey to him all his Right, Title, and Interest of or unto the *Glebe* and Parsonage of *Broadcome* (being *Dean and Chapter Lands*) in which Deed there was a Covenant that he (the Plaintiff) *had a good and lawful Power to grant and convey the Premises to the said Giles and his Heirs*, which being contrary to the true Intent, and Meaning of the said Parties, and it appearing so in the said Conveyance, where the Rest of the Covenants are restrained to Acts done by the Plaintiff, and all claiming under him; and that this Covenant ought to be so restrained, especially since the said *Giles Studley* knew the Plaintiff's Title, and that he sold him only such Estate which he had in the Premises, and never took any Advantage, or questioned the Plaintiff in any of the Covenants in the Deed, but continued in the Possession, and received the Profits thereof for 10 Years and upwards; and after the *Restoration*, he or his Son took a new Lease of the *Dean and Chapter of Sarum* for 3 Lives, and had a considerable Abatement of the *Fine*, in Respect of the Purchase made by the Plaintiff.

This Decree is agreeable to a Rule in the Civil Law, which is, if the Words of a Covenant appear to be

The Court decreed, that the general Words in this Covenant ought not to oblige the Plaintiff, being contradicted by all the subsequent Covenants, and the Plaintiff selling only such an Estate which he had; therefore it was ordered, that the Defendant acknowledge Satisfaction on the Judgment he had obtained, and a perpetual Injunction to stay all Proceedings at Law.

contrary to the Intention of the Covenantors, which is otherwise evident, such Intention must be followed rather than the Words. *Dom. 1 Vol. 39.*

Thomas Clerke, *Administrator of Mary Clerke his late Wife, cum Testamento annex. &c. Plaintiff.*

John Knight, *Gent. John Baker an Infant, by his Guardian Thomas Hodges, and Executor of Nicholas Baker, Defendant.*

THE Case was, *Nicholas Baker* by his last Will devised to *Mary Baker* his Daughter, the Sum of 500*l.* to be paid at her Age of 20 Years, or Day of Marriage, Part thereof, (*viz.*) the Sum of 250*l.* out of the Lands in the Bill mentioned, which were mortgaged to the said Testator *Nicholas Baker*, by *John Knight*, for the Sum of 200*l.* which said Mortgage was then forfeited, and the said Testator *Nicholas Baker* being dead, and the Lands descended to the Defendant *John Knight* as Son and Heir of the Mortgagor, and the Plaintiff *Clerke* having married the said *Mary*, and she being dead, and the Portion not paid, he administred to her, and brought this Bill for the said Legacy, against the Defendant the Heir, and *Thomas Hodges*, the Executor of the Mortgagor, refusing to pay the said 250*l.* pretending the Plaintiff was not entituled to it, because the Mortgage was forfeited in the Life-time of the Testator *Nicholas Baker*; and therefore neither the Heir or Executor of the Mortgagor were bound to pay that Money; but the Plaintiff's Counsel insisted, that the Defendants should pay the Mortgage-Money, and Interest within a limited Time, or be foreclosed.

Legacy devised to a Daughter to be paid out of Lands, Mortgaged to the Father, which Mortgage was forfeited in his Life-time, the Daughter married, and both she and her Father died before the Legacy paid; and the Legacy was decreed to her Husband.

Which the Court decreed, and that the Plaintiff was well entituled to this Legacy.

Ursula Burges, *Administratrix of Tho. Burges, Plaintiff.*

Elizabeth Burges *an Infant, by her Guardian, William Skinner, Nicholas Clerke, and Hen. Hughes, Defendants.*

THIS cause came before the Court upon a Case stated thus.
Jf. Thomas Burges being seised in Fee of several Lands, did after his Marriage, with *Elizabeth* his first Wife, by Lease

and Release (in Consideration of his Wife's Settling her Estate upon him and his Heirs, if he should survive her, as he did) settle his said own Estate upon himself for Life, Remainder to the said *Elizabeth* for her Life, for her Jointure, Remainder in Tail Male upon the Issue of their *two Bodies*, and for Default of such Issue, to the Use of * all the *Daughters of the said Thomas* to be begotten on the *Body* of the said *Elizabeth*, and the * *Heirs of their Bodies to be begotten successively*, &c. and for Default of such Issue, to the Use of the said *Thomas and Elizabeth* their Heirs and Assigns.

* Such a Limitation of a Trust of a Term for Years is void, because the Law will not presume that any Term for Years can continue so long as a Man may have Heirs of his Body.

And the said *Thomas* being likewise possessed of Lands for several *Terms of Years*, did at the same Time, and for the same Consideration, assign those Terms and Estates to the said *Skinner and Clerke*, in Trust to the several Uses and Purposes as limited, and declared, of his Freehold Lands.

This was the first Agreement in Marriage.

Tho. Burges, had before this Settlement, made by him as aforesaid, agreed with *Jane Simpson*, the Mother of the said *Elizabeth*, that he should give Security to settle 150 *l. per Ann.* on her in Jointure, with a Remainder after both their Deaths, to the Issue Male of that Marriage; provided if there should be no such Issue, then (*besides her own Lands*) to leave *Portions* for *Daughters*, (*viz.*) 2000 *l. amongst them*, if there were more than one, but if one and no more, then to leave such *Daughter* 2000 *l.* and for the Performance of this Agreement, he entered into a *Recognisance* of 5000 *l.* and thereupon the said Marriage took Effect, and they had Issue between them, the Defendant *Elizabeth*, and no more.

Afterwards the said *Thomas Burges* and *Jane Simpson* came to a new Agreement, and in Pursuance thereof, the Lands of Inheritance of the Wife were by Fine, and other Assurance, settled on the said *Thomas* and *Elizabeth* his Wife, and upon the Heirs of the *Survivor* of them; and in Consideration thereof, the said *Thomas Burges* settled his own Lands of Inheritance on himself, and *Elizabeth* his said Wife for their Lives, the Remainder in Tail Male as aforesaid, and for Default of such Issue to the *Daughters*.

Thomas Burges survived *Elizabeth* his Wife, and afterwards married the Plaintiff *Ursula*, and being dead Intestate, *Ursula* the Plaintiff as Administratrix, exhibited her Bill to have the *Leasehold Estate* of her late Husband decreed to her, and that she might be relieved against the said *Recognisance*, alledging that the *Freehold Estates* of the said *Thomas Burges* are now come to the Defendant *Elizabeth* the Infant, being of far greater Value, than the 2000 *l.* which

which he agreed to leave; therefore the said Agreement being performed, the said *Recognisance* ought to be delivered up.

The Court, as to that Part of the Case stated, which relates to the Settlement of the Terms for Years in Tail Male; upon the Issue of the said Marriage, Remainder to their Heirs, decreed the Limitation thereof to the Defendant *Elizabeth* was void, and that the Trust of the said Terms doth belong to the Plaintiff as *Administratrix* to her said late Husband *Thomas Burges*.

Nota so far the same Case is reported in 1 Ch. Rep. 229. and in 1 Mod. 114. *Burges* versus *Burges*.

But the chief Question in this Case was, whether the Settlement of the Freehold Lands by *Thomas Burges*, upon *Elizabeth* the Defendant, by this subsequent Agreement should be taken as a full Satisfaction of the Portion of 2000*l.* and of all which she could claim out of the said Intestates Estates.

The Husband before Marriage agreed to secure 2000*l.* for Daughters, besides

the Lands of his intended Wife, which were valued at 3000*l.* and he gave a *Recognisance* of 5000*l.* for Performance of this Agreement.

After the Marriage, they came to a new Agreement by which the Lands of the Wife were settled on him, and her, and the Survivor of his, or her Heirs, and his Lands of Inheritance were settled on the Daughters for want of Issue Male.

They had one Daughter, who had now all the Lands of Inheritance, both of Father and Mother, and his Lands being worth more then 2000*l.* then the Plaintiff insisted, that was a Performance of the first Agreement, and that she ought not to have the Land, and 2000*l.* more.

But decreed, that it was not a Performance of the Agreement, unless his Lands were worth 3000*l.* because by the said Agreement the Daughter was to have 2000*l.* besides her Mother's Lands which were worth 3000*l.* in all she was to have 5000*l.* Portion, so that what his Lands fall short of 5000*l.* Value, ought to be made good out of his Leasehold Estate.

And as to that Matter it was insisted by the Plaintiff's Counsel, that the Lands so settled being of greater Value than the 2000*l.* agreed to be secured by the first Marriage Agreement, and which are since come to the Defendant, therefore the Intent of that Agreement, and the *Recognisance* defeasanced for the Performance thereof, was more than satisfied, and by Consequence no Use ought to be made thereof, especially since the said *Tho. Burges* died more in Debt to his Creditors than his personal Estate amounted unto; and for that Reason the *Recognisance* ought to be vacated.

But it was argued on the other side for the Defendant the Infant, that by the first Agreement in Marriage of her Mother, the Portion for Daughters was to be 2000*l.* besides the Mother's Estate which was valued at 3000*l.* and therefore the Statute was in 5000*l.* Penalty, that it was upon the Consideration following: That the Defendant *Elizabeth*'s Mother settled her own Lands of Inheritance upon the said *Thomas Burges*; and his Heirs, (*viz.*) in Consideration that her Heirs should have the Benefit, both of his Leasehold and Freehold Estate; and therefore the Statute ought not to be delivered up and vacated, for that the Limitations to the Daughters, as to the Leasehold Estate, being declared to be void, the last Agreement was never fully performed or executed; and therefore the Defendant *Elizabeth* ought to have

have the Aid of the Statute to recover the said 2000*l.* upon the Marriage-Agreement appointed to be secured to her, for that the Sum of 2000*l.* is not sufficient to make up the Freehold Lands to be of the Value of 5000*l.* that being the Portion agreed for this Defendant *Elizabeth*.

The Court decreed, that the Infant's Trustees being no Parties to the last Agreement between her Father and Mother, the same could not, and ought not to hinder her from any Benefit, she was to have by the first Agreement, especially since the last Agreement seems not to be fully performed by the said *Thomas Burges*, the Infant's Mother having settled her own Lands upon Consideration, and in respect, that her Daughter the Infant, the now Defendant, should have both the Freehold and Leasehold Lands, according to the Intent of the Settlement thereof, which, if the Settlement of the Leases had been good, would have been a sufficient Compensation both for her own Lands, and for the 2000*l.* agreed on by the first Agreement to be left to the Daughter; but that the Limitation to her as to the *Leases being void*, if the Freehold Lands of her Father are not sufficient to answer both the Value of the Mother's Lands, and the said 2000*l.* she (the Defendant) ought to have the Aid of this Statute, to have so much out of her Father *Thomas Burges's* Estate, as the same shall fall short upon a true Valuation of the whole; and that no other Use ought to be made of the Statute.

Therefore it was agreed, that a Master should inquire into the Value of the several Estates, and to see whether the Husband's Estate by the subsequent Agreement will answer the Value both of his Wife's Estate, and the said 2000*l.* and if it doth answer the same, or if *Ursula* the Plaintiff pay into *Elizabeth* the Defendant what it falls short, then the Statute to be delivered up, and an Injunction in the mean time; and that the Trustees of the said *Terms for Years* shall not assign till farther Order.

William Dyke, Thomas Dyke, Edward Dyke, and Elizabeth Dyke, *Infants*, by Margaret their Mother and Guardian, *Plaintiffs*.

Thomas Dyke, *Doctor in Physick*, Defendant.

Legacies devised payable at a certain Time, now expired, and the Legatees all Infants; decreed, that the Master shall put the Money out at Interest.

these Legacies were to be paid *within one Year after the Testator's Death*, which being now past, and the Legacies all due, the Defendant the Executor refused to pay the same, without being indemnified by this Court, for that the Plaintiffs were Infants, and therefore incapable to give Discharges.

The Court decreed, that a Master shall see the said Legacies placed out upon Securities at Interest, as he shall approve, and if any of the said Legacies are already put out upon Securities, and he shall approve thereof as sufficient and well secured, then it shall remain in the same Hands, and upon the Securities to be renewed in the Name of the Plaintiff the Guardian, or of such other Person as the Master shall think fit; and that the Defendant complying with this Decree, shall be indemnified against the Infants and all others. *See p. 12. 400.*

John and Mary Gratwick, *Infants*, by William Gratwick *their Guardian*, Plaintiffs

Thomas Freeman, *Gent.* Defendant.

THE Case was, *John Gratwick* the Father of the Plaintiffs, who are Infants, devised to them several Sums of Money and Legacies, &c. and made *Mary* his Wife (who was Mother of the Plaintiffs) Executrix; after the Death of the said *John Gratwick* the aforesaid *Mary* married the Defendant *Thomas Freeman*, and afterwards she died, and now a Bill was exhibited against the said Defendant *Freeman* to have an Account of the personal Estate of the said *John Gratwick*, and that the Plaintiffs may have the Benefit thereof, being devised to them by his Will.

The Father devised Legacies to his Children being Infants, and made their Mother Executrix, and died; she married again, and died: Upon a Bill brought by the Infants against their Father in Law, to have an Account of the personal Estate of their Father, it was decreed against them, because they did not call him to Account in the Life-time of their Mother.

The Defendant *Freeman* insisted, that he ought not to be questioned now for the personal Estate of the said *John Gratwick*, because he was never called to any Account for the same in the *Life-time of his said Wife Mary*, and so not responsible either in Law or Equity for any Part thereof, which came to her Hands after the Death of the said *John Gratwick*.

And the Court held, that the Plaintiffs had not well intitled themselves to an Account of the personal Estate of their late Father, which, after his Death, came to the Hands of *Mary* their Mother.

John

John Ireton *Esq;* and Elizabeth his Wife, *Executrix* of Edmund Sleigh, *Esq;* Plaintiff.

Thomas Lewes, *Esq;* Defendant.

Plea, for
that all Per-
sons con-
cerned are
not Parties
to the Bill,
allowed.

THE Bill was, to have the Intestate *Sleigh's* Share of an Adventure with the Defendant *Thomas Lewes*, who pleads, that there are several Persons (whose Names are mentioned in the Plea) besides him and *Sleigh*, who had several Shares in the said Adventure, as by a certain Deed it might appear, which other Persons were not made Parties to this Bill, and therefore the Defendant ought not to account to the Plaintiff, unless all Parties concerned in this Adventure were before the Court.

This was allowed to be a good Plea.

Thomas Boteler, *Plaintiff*.

Clement Spelman, *Defendant*.

A Commis-
sion decreed
to set out the
Boundaries
of Lands, &c.

THIS Suit was, to have a Discovery of the *Metes and Bounds* of four Acres of Lands, which (as it appeared to the Court) the Plaintiff had a Title unto, these four Acres being intermixed with other Lands which the Defendant had in a Place called the *Great Field*, and which by Ploughing and by other Means were so destroyed, that those four Acres could not be distinguished from the other Lands of the Defendant in the Field.

The Court decreed a Commission to issue, to set out and distinguish the four Acres *with Metes and Bounds*, and the yearly Value thereof, and how long the Defendant hath held the same, for which he is to pay the Plaintiff, and he (the Plaintiff) is to enjoy the said four Acres, when set out and distinguished, against the Defendant, and all claiming under him, or in Trust for him.

Sarah Atkins, *Widow and Administratrix of Thomas Atkins, Plaintiff.*

Thomas Nunn *and Elizabeth his Wife, Richard Phillips and Margaret his Wife, Samuel Boltman and Richard Philips, Defendants.*

THE Case was, the Plaintiff intitled her self to the Lands, by Virtue of a Settlement made upon her by *Thomas Atkins* her late Husband, in Marriage, and for her Jointure, which after his Death she ought to enjoy, but that the Defendants *Elizabeth* and *Margaret* (which said *Elizabeth* is Sister and Heir of *Thomas*) do keep a Mortgage on Foot, which they pretend to be made by the said *Thomas Atkins* before his Marriage with the Plaintiff *Sarah*, and this was for the Term of 1000 Years to one *Lashmere*, to secure the Repayment of 300 *l.* and Interest which *Lashmere* lent to him; and this Mortgage the Defendants procured to be assigned to them, or one of them, or to some other Person in Trust for them; and that they have the Deeds and Writings concerning the Estate; and refuse to redeem, therefore the Plaintiff exhibited this Bill to discover Incumbrances on her Jointure Lands, and to account for the Mesne Profits, and that she might redeem, if the Defendants refuse so to do, at a Time to be limited.

The Mortgage in Jointure to his Wife, and died intestate; she got Administration, and brought a Bill to discover Incumbrances on her Jointure; the Defendant claims 200 *l.* by the Will of her Father, but decreed, that he being Tenant in Tail, and having done no Act to bar it, had no Power to devise 200 *l.* in Prejudice to *Thomas Atkins* the Issue in Tail, and the Husband of the Plaintiff, to whom he made this Jointure.

The Administratrix was decreed to account for the personal Estate, and that to be applied towards Discharge of the Mortgage.

Elizabeth, by her Answer, claims 200 *l.* devised to her by her Father *Humphrey Atkins*, and this was to be paid out of the Premises, and that the Inheritance thereof came to her as Sister and Heir of the said *Thomas Atkins* her Brother; and that the Mortgage was made before his Marriage with the Plaintiff *Sarah*, which by Mesne Assignment, is now come to the other Defendants *Boltman* and *Phillips*, who, upon Payment of Principal, Interest, and Costs, offer to assign, &c.

It was insisted by the Plaintiff's Counsel, that if *Humphrey Atkins* made such a Will, as is pretended, yet he had no Power to charge those Lands with the Payment of 200 *l.* after his Death, because he was only Tenant in Tail thereof, and the same descended to *Thomas* his Son, who was the Issue in Tail, which said *Thomas* suffered a Common Recovery, and settled

the Premises on the Plaintiff *Sarah* and himself, and the Heirs of their two Bodies, Remainder to his own right Heirs.

And the Court, upon reading the Proofs, and an Indenture dated in 1643, by which the said *Humphrey* settled the Premises in *Tail*, and another Indenture dated in *January* 1670, by which this *Jointure* was settled on the Plaintiff,

Decreed, the Provision which *Humphrey* made for his Daughter *Elizabeth*, by devising 200 *l.* to her, was merely *voluntary*, he being only seised of an *Estate-Tail* in the Premises, and by Consequence had no Power to charge the same to the Prejudice of the Plaintiff as *Jointress*, and that if the Defendant *Num*, and *Elizabeth* his now Wife, will not redeem the said Mortgage within a Time to be limited by a Master, then the Plaintiff shall be admitted to a Redemption, and that the Master compute the Principal and Interest due on the Mortgage, and tax the Costs of the Mortgagees.

That the Plaintiff account for the personal Estate of her late Husband *Thomas Atkins*, and what Assets are in her Hands to be applied towards Satisfaction of the said Mortgage, and to make good the Covenant of her Husband.

But the Rents and Profits of the Premises, being the Jointure of the Plaintiff since her Husband's Death, is not to be brought into the Account towards the Discharge of the Mortgage, but to be answered and made good by the Defendant *Num* and his Wife, with Interest, and the Plaintiff shall enjoy the Lands during her Life.

And after the Account is taken and stated, *Num* and his Wife, by a limited Time, shall make their Election, whether they will redeem or not, and give Notice thereof to the Plaintiff; or if they will not, then the Plaintiff may redeem, and upon Payment of Principal, Interest and Costs, the Defendants the Mortgagees shall assign, &c.

Thomas Cheek, *Esq;* Plaintiff.

Philip Viscount Lisle and John Harvey, *Esq;* Defendants.

The Father covenanted to pay 4000*l.* in Marriage with his Daughter to the Plaintiff, and he covenanted to make her a Jointure of 800 *l. per Annum*, Part of the Portion was paid, and Part of the Jointure settled; and the Father covenanted to pay the Residue within six Months after the Husband made a Purchase of so much Lands and Settlement made on the Wife, as would make up her Jointure 800 *l. per Annum*, which Purchase and Settlement the Husband covenanted to make within 4 Years after the Date of the Articles, but she died within a Month after the Marriage, so that it became impossible for him to perform his Agreement; and upon a Bill exhibited to have the Residue of the Portion he was not relieved, but the Bill was dismissed.

Equivalent

Equivalent, was never made, the same becoming *impossible by the Act of God*, (*viz.*) by her dying in the mean Time: *ff.* The Case was thus; The *Earl of Leicester* in *June 24 Car.* settled Lands in *Glamorganshire*, for raising Portions for the Daughters of his Son the *Lord Lisle*; if one Daughter, then she to have 3000 *l.* and if more than one, then 4000 *l.* to be equally divided amongst them, and there being two such Daughters, (*viz.*) *Dorothy*, who married the Plaintiff *Thomas Cheek*, and *Elizabeth*; upon the Treaty of the said Marriage in *November 1668*, it was agreed between the Plaintiff and the *Lord Lisle*, that he should pay unto the Plaintiff, on the Day of his Marriage with the said *Dorothy*, the Sum of 1500 *l.* and give Security to pay unto him 2500 *l.* more with Interest, at a Time then agreed on, which was to be in full of the Marriage Portion of the said *Dorothy*, and of all Sum or Sums of Money which she might claim by the said Settlement of the *Earl of Leicester* her Grandfather, and that the Plaintiff should settle in Jointure on her (if she survived) Lands of the clear yearly Value of 800 *l.* (except Taxes payable by the Landlord) whereof the Lands in the Bill mentioned, being of the Value of 446 *l. per Annum*, were to be Part, and the Residue was to be made up by the Purchase of Freehold Lands to the yearly Value of 354 *l.* (except as aforesaid) within *four Years after the Date of the said Articles*, and this was to be in full of her Jointure.

Afterwards (*viz.*) 7 *December 1668*, by another Indenture made between the Plaintiff of the one Part, and the *Lord Lisle* and the said *Dorothy* on the other Part, in Consideration of the said intended Marriage, and of 4000 *l.* mentioned to be paid, or secured to be paid to the Plaintiff, he settled the said Lands in the Bill mentioned, of the yearly Value of 446 *l.* on the said *Dorothy* for her Life, for Part of her Jointure, and the *Lord Lisle*, according to his Agreement, paid 1500 *l.* and at the same Time gave Security to pay the remaining 2500 *l.* and likewise at the same Time the Plaintiff, by other Articles then made and executed by him, covenanted within four Years after the Date thereof, to purchase Lands in Possession of the yearly Value of 354 *l.* and settle the same on the said *Dorothy* for Life, for her Jointure; in which said Articles (being made between the Plaintiff and the *Lord Lisle*) he the said *Lord Lisle* did covenant to pay the Plaintiff or his Assigns 2500 *l.* within six Months next after such Purchase made, and Settlement as aforesaid, and Interest for the same half yearly in the mean time.

And in Case the Plaintiff died before such Purchase and Settlement made, then the *Lord Lisle* should, within six Months after the Death of the Plaintiff, pay to the said *Dorothy*, her Executors, Administrators or Assigns, the said 2500 *l.*

And it was farther agreed, that *in Case the said 2500 l. and all the Interest thereof, were not paid on such Days, and to such Persons as the same should become due by the said Articles, that then the said Harvey* (the now Defendant, who was the surviving Trustee) *should, within twelve Months after such Failure, sell the Messuages and Tenements* (which were secured to pay the said 2500 l.) and out of the Money arising by such Sale to pay the same, and the Interest thereof, to such Person to whom it should be due by the said Articles; the Residue to the *Lord Lisle, &c.*

After the said Indentures and Articles were executed, the Marriage took Effect; and about one Month afterwards the said *Dorothy* died, so that it became *impossible* for the Plaintiff to perform the said Covenant on his Part, but yet he insisted, that in Equity the said 2500 l. ought to be paid to him, being left in the *Lord Lisle's* Hands, as a *Depositum* to purchase Lands of 354 l. *per Annum*, according to the Intent of the said Articles; and that notwithstanding his said Wife *Dorothy* died before his Jointure was fully perfected, yet the Benefit of that 2500 l. and the Interest thereof, was intended and ought to go to him.

And for that Purpose he brought an *Ejectment*, to have the Possession of the Lands assigned to him, and to receive the Rents and Profits thereof, but *Harvey disclaimed the Action*, and refused to let the Plaintiff use his Name; whereupon he brought this Bill against *Harvey*, to compel him to perform the Trust, which *Harvey* owned in his Answer, but conceived that it was determined by the Death of *Dorothy*, before the Plaintiff had settled 350 l. *per Annum* on her, and therefore he was not intitled, either at Law or in Equity, to recover the 2500 l. and the *Lord Lisle* says the same Thing, and that the Money was not to be paid upon any other Terms, nor did he agree or intend to pay it, but only according to the Articles.

Upon the whole Matter the Court declared, that if the Plaintiff had made his Agreement with the *Lord Lisle*, so as it would have bound him in Law to pay the 4000 l. this Court would not have hindered him from taking the utmost Benefit thereof at Law, tho' his Wife had died the very Day after her Marriage; but since he began to try at Law, and finds that he cannot recover, and that as the Articles of Agreement are penned, the Defendant is not bound to pay this Money; the Court saw no Cause to mend the Agreement in Equity, which did not oblige the Defendant at Law; and the rather, because there was no Pretence that the Articles were drawn up or penned, contrary to the Intention of the Parties, so that these Articles which bind the Defendant by a Covenant to pay 2500 l. *within six Months after a Purchase and Settlement of 354 l. per Annum*, are in Nature

Nature of a * *Condition precedent* to the Payment of the Money, which cannot be discharged in Equity.

* In these Covenants, whose Accomplishment depends on the Event of a Condition, all Things remain in Suspense, and in the same Manner as if there never had been any Covenant. Dom. 1 Vol. 48.

Besides, in these Articles there is an express Covenant, that *if the Plaintiff should die before his Wife*, then the Money should be paid to her, but there is no Covenant, that *if she die before him and before the Settlement made that the Money should be paid to him*, which shews, that it was not intended; neither could this Money be a *Depositum* in the Hands of the *Lord Lisle* to purchase Lands, because the Purchase and the Settlement were to precede the Payment.

'Tis true, the Death of the Wife hath made the Performance of the Agreement * *impossible* on the Plaintiff's Part, which was to purchase and settle Lands to such a Value on his Wife; but then, by the Penning of these Articles, the Benefit of that Accident, which happened by the *Act of God*, shall belong to the Defendant and not to the Plaintiff.

* By the Civil Law Conditions which are impossible to be performed annul

the Covenants to which they are annexed. Dom. 1 Vol. 49.

And tho' the Defendant secured the Payment of 2500 *l.* by a Conveyance of Lands to the Defendant *Harvey*, (who is the surviving Trustee) yet that shall not in Equity alter the Case, because the Trustee is to raise the Money according to the Articles, which are in Nature of a Defeasance on a Deed of a Trust, so that nothing is or can be secured by the Trust which is not due by the Articles; for tho' 'tis said, that the Trustee shall re-assign if the 2500 *l.* is paid, yet he ought likewise to re-assign if 'tis not paid, that is, if it cease to be payable, and even that Clause itself is impertinent, because it imports no more than what the Law would have implied, if it had been left out.

'Tis likewise to be observed, that the *Deed of Trust*, the *Jointure-Deed* and the *Articles* are all of the same Date, and shall be intended to be executed at the same Time, and are all as one entire Agreement, therefore the Recital in the *Jointure-Deed*, that it was in Consideration of Marriage, and of 4000 *l.* paid or secured to be paid as the Portion, &c. cannot be understood as any positive Agreement for 400 *l.* but it must be expounded by the Articles to which it doth in a Manner refer.

If therefore it hath been lawful for a Court of Equity, in some Cases and upon special Circumstances, to expound a Deed otherwise than the Letter thereof seems to import, yet this ought never to be done so as to *make a Deed*, but only to avoid some Extremity; but the Plaintiff would have a Deed made in this Case, for he would have the Court help him to the utmost Farthing of this 2500 *l.* without any legal Agreement to enforce

force the Defendant to pay it, or without any equitable Circumstances on his Part, to induce the Court to decree for him.

Therefore the *Lord Keeper*, assisted by *Justice Rainsford*, who was of the same Opinion, ordered the Bill to be dismissed.

Sir William Bassett, Son and Heir of Elizabeth Seymour, late Wife of Henry Seymour, Esq; deceased, by Bill of Revivor, Plaintiff.

Edward Nosworthy, Esq; Defendant.

Bill by the Heir at Law, to discover a Revocation of a Will by his Ancestor, under which the Defendant claimed as a Purchaser; and pleaded another Bill brought in the Exchequer for the same Matter, and after a full Hearing dismissed, and the Dismissal signed and inrolled; the Plea was held good.

THE Plaintiff, *Sir William Bassett*, intitled himself, as *Son and Heir of Elizabeth Seymour*, who was the only *Daughter and Heir of Sir Joseph Killigrew*, who was Brother and Heir of *Sir Henry Killigrew*, whose Estate the Lands in the Bill mentioned formerly were; the Defendant's Title being under a pretended Purchase (as the Plaintiff alledged) of these Lands at *Drury-house*, and under the Will of *Sir Henry Killigrew*, the Purchase being from *Jane Davis*, afterwards the Wife of *Mr. Berkley*, and from *Henry Hill*, the pretended natural Son of the said *Sir Henry Killigrew*, of which Will the Plaintiff alledged there was a *Revocation* by some subsequent Deed or Will; and for a Discovery thereof, and what *Mr. Nosworthy* really paid for the Purchase, and what Deeds and Writings he had, and to set aside the Incumbrances which he had bought to protect his Purchase, and that *Mrs. Seymour* might try her Title at Law upon the supposed *Revocation* against the Title of the Defendant, as a Purchaser under the said Will, the now Plaintiffs exhibited this Bill:

To which the Defendant pleaded a *Dismissal* of a Bill in the Court of *Exchequer* signed and inrolled, which Bill was there brought for the same Matter as in this Bill, and fully examined and dismissed upon a full Hearing, but without *Prejudice*, and the Dismissal duly signed and inrolled; and he farther pleaded, that he was a Purchaser for a valuable Consideration, *bona fide*, paid without Notice of any Revocation.

This Cause being heard by the *Lord Keeper Bridgman*, he ordered Precedents to be searched, where a Plaintiff, after a Dismissal of his Bill on a judicial and formal Hearing, and a full Examination of Witnesses in one Court of Equity, (*and that without Prejudice*) had ever been admitted in another Court of Equity, to examine new Witnesses to the same Matter formerly in Issue and examined.

And afterwards there being several Orders made in this Cause, and one by which the Plea was over-ruled; and now the Cause coming to be heard by the *Lord Keeper Nottingham*, who having read the Articles for the Defendant's Purchase, and the *Conveyances, Leases, Fine and Recovery*, which appeared to be made before any Purchase at *Drury-house*, and having considered the whole Matter, he was of Opinion, that the Court had gone much out of the Way, and that the Cause had been perplexed with several *extraordinary Orders*, and not according to the usual Course of Proceedings; and therefore it was to be brought back to that State where it first went wrong.

Whereupon he discharged all former Orders for examining Witnesses at large, and confirmed all Examinations to the Matter of the Defendant's Plea, which, by the Justice of a Court of Equity, ought to conclude the Plaintiff, unless he could disprove it; and a Bill of the same Nature having been brought in the *Court of Exchequer*, and there, after a full Examination, dismissed, it seemed very hard that the Dismission *was without Prejudice*, because no *cross Bill* can or ought to be received *after Publication*, to examine the same Witnesses again, for that might be a Means to introduce Subornation and Perjury, even by the Order of this Court, and no Precedents can be found to warrant such Practice.

Therefore the Defendant having pleaded this *Dismission* in Bar of any farther Examination, and that he is a Purchaser, *bona fide*, without Notice of any *Revocation*, and afterwards for the Court to save the Benefit of this Plea, by Way of Answer, and yet to allow an Examination to the whole Matter, which had been pleaded in Bar to such Examination, (all which had formerly been done in this Cause) was in Effect to surprize the Defendant, and unawares to draw him off from that which was his most material Defence.

The Cause being then set right before the Court upon the true Merits thereof, there were only two Points which were considerable.

1. What the Law of this Court is concerning *Purchasers*.
2. Whether the Defendant was a *Purchaser* within that Law.

As to the first Point, a Purchaser, *bona fide*, without Notice of any Defect in his Title at the Time of the Purchase made, may lawfully buy in a *Statute or Mortgage*, or any other Incumbrance; and if he can defend himself at Law by any such Incumbrances bought in, his Adversary shall never be aided in a Court of Equity by setting aside such Incumbrances; for Equity will not disarm a *Purchaser*, but assist him; and Precedents of this Nature are very antient and numerous, (*viz.*) where the Court hath refused to give any Assistance against a Purchaser either to an *Heir*, or to a *Widow*, or to the *Fatherless*, or to *Creditors*, or even to one Purchaser against another.

And this Rule, in a Court of Equity, is agreeable to the Wisdom of the Common Law, where the Maxims which refer to *Descents, Discontinuances, Nonclaims*, and to *collateral Warranties*, are only the wise Arts and Intentions of the Law to protect the Possession, and to strengthen the Rights of *Purchasers*.

2. As to the second Point the Court declared, that the Defendant had sufficiently proved his *Plea*, and himself to be a Purchaser within the Protection of this Court, because no Fraud or Circumvention appeared; and it was evident, that the Defendant had paid several great Sums to discharge *Statutes*, which incumbered those Lands, over and above what was paid to Mrs. *Jane Berkley* for her Estate for Life, and to *Henry Hill* for his *Reversion*; and tho' the Lands were proved to be of much greater Value at this Time, by the falling of several Lives, than what they were at the Time of the Purchase, yet that will not alter the Case in Equity, because in Purchases the Question is not, whether the *Consideration be adequate, but whether 'tis valuable*; for if it be such a Consideration as will make the Defendant a Purchaser within the Statute 27 *Eliz.* and bring him within the Protection of that Law, he ought not to be impeached in Equity.

*See a cc. Somerset.
64.*

And since *Henry Hill* had nothing to subsist on during his Minority but this *Reversion*, and being a *Bastard* could have no Kindred by the Law, and probably but few Friends, there was some Hazard of the Money, which was advanced during his Minority, if he died before the *Fine and Recovery* suffered.

Therefore the Court allowed the *Plea* and dismissed the Bill, and suppressed all the Depositions taken in this Cause before *April* last, and all since, but only such which relate to this *Plea* of the Defendant.

Warwick Bampfeyld, *Esq*; Plaintiff.

Charles Vaughan, and Hugh Vaughan, *Esqs*; Defendants.

Demurrer
for that an
Executor or
Administra-
tor were not
made Parties
to the Bill
over-ruled.

THE Case was, *Thomas Bampfeyld*, the Plaintiff's Father being seised in Fee of the Lands in the Bill mentioned, granted the same to the Defendant's Father for the Term of 1000 Years, which said Term was agreed to sink and be extinguished, if the said *Thomas Bampfeyld* should pay 80 *l. per Annum* to the Defendant's Father, his Executors or Administrators for 42 Years next ensuing, which being now lapsed at *Lady-day* past, this Bill was exhibited against the Defendant to surrender the Residue of the said Term.

The Defendants by their Answer confess, that the 42 Years were expired, but demur to the Bill, for that the *Executor or Administrator of Thomas Bampffield* was not made a Party.

But the Court held the Demurrer was insufficient, and therefore it was over-ruled, but without Costs, and that the Plaintiff might amend his Bill if he thought fit, and the Defendants not to waive their Appearance; but to plead, answer or demur.

Diana Lady Cranborne, and the Lady Anne Bowyer *Executrixes of James Earl of D. and Thomas Delmayhoy, Plaintiffs.*

John Crispe and Thomas Cripse, *surviving Executors of Sir Nicholas Crispe, and many other, Defendants.*

THE Defendants being indebted to the *East-India Company* in several Sums, and the Plaintiff's Testator being bound in a Bond with them for the Payment thereof; did accordingly pay the Sum of 4000 *l.* and to indemnify him all, the said Defendants gave him a *Counterbond* in the Penalty of 1000 *l.* who being now dead, the Plaintiff's his Executors exhibited a Bill to have the *Interest of this 4000 l.* decreed to them, and there having been many Suits, and some abated by Death, and several of the Defendants having confessed *Assets*, and others denying, and some not appearing at the Hearing, and the Counterbond being left in the Hands of a Master, since which the Seals of some of the Obligors were broken off and defaced, so as the Plaintiff could not sue at Law.

Several are bound in a Bond, the Court may proceed against any, and make a Decree, tho' all the Obligors are not before the Court. The Reason why all the Obligors are to be before the Court, is a Rule of Conscience, and may be dispensed with in Equity.

It was now declared, that tho' some of the Obligors, or their Representatives were not before the Court; yet this was a particular Case, and had been much delayed, and though the Seals of the Obligors were broken off since the Bond was left with the Master, in Obedience to an Order of this Court; yet if that Accident had never been, the Court might have proceeded either upon the whole, or in part, and jointly or severally against the *Obligors*, or against any of their respective Heirs, Executors or Administrators.

For the Reason why *all the Obligors, their Heirs, Executors or Administrators* are to be made *Parties* in Equity was, and is only a *Rule of Conscience*, and to save those who are severally charged, the Trouble of a new Suit for *Contribution* against those who are not charged; but this is not of absolute Necessity, and

therefore may be dispenced withall, especially in this Case where the Parties are so many, and the Delays so multiplyed and continued.

Therefore the Decree was, that the Defendants who have confessed *Assets*, should pay *Interest* until the several Times the said Sum was in Obedience to the Order of this Court repaid to the Plaintiff's Testator, together with the now Plaintiffs Costs at Law to be taxed by a Master.

That such of the Defendants who made Default at the Hearing, shall pay five Marks, and shew Cause, &c. and that others of them be liable as far as they have Assets, which the Master is to examine and inquire into, and such of them who comply and pay, &c. to have the Aid of this Court against the rest, and those who have utterly denyed Assets, that the Bill as to them be dismissed, for that this Cause came before the Court upon Bill, and Answer without any Proof.

Richard Bucknall and John Hicks, *Executors of*
John Bullock, *Plantiffs.*

Mary Bullock, *Widow of the said John Bullock, and*
John Bullock *an Infant of the said Mary his Guar-*
dian, Sir Thomas Player, and Mary Bullock an
Infant, by Thomas Sheppard her Guardian,
Defendants.

The separate
Interest of
Infants who
had two Fa-
thers, and
but one Ad-
ministration
determined
by a Decree.

THE Case was, one *Haxford* was possessed of a *Term* for *Years*, in some Houses in *Barnaby-Street*, *Value* 25 *l. per Annum*, and in *June* 1665, devised the same to one *Walmore*, who married *Mary* the Niece of the Testator.

This *Walmore* was possessed in his own Right of a *Term* for *Years*, in four Houses in *Angel-Street*, and by his last Will devised the same to his two Children *John* and *Sarah*, being of the *Value* of 19 *l. per Annum*, and the *Surplus* of his Estate, after Debts and Legacies paid, he devised to his Wife *Mary* whom he made Executrix, and soon afterwards died.

Mary afterwards married *John Bullock*, by whom she had Issue *Mary the Infant*, (one of the Defendants) and soon after this Marriage *Mary the Mother* died Intestate; and then the said *Bullock* married *Mary Wade*, by whom he had Issue *John Bullock* the Infant, (the other Defendant,) and about the Year 1671, the said *John Bullock* the Father devised the *Surplus* of his

his personal Estate, (after Debts and Legacies paid) to *Mary his Widow*, and died, having first made the Plaintiffs *Rich. Bucknell*, and *John Hicks* Executors, who having gotten the Administration to the Estate of *Haxford* and *Walmore*, and of *Mary the Widow of Walmore* during the Minority, and in Trust for *Mary the Infant*, and having proved the Will of *John Bullock* the Father, and exhibited Inventories of the Estate in *Barnaby-Street*, and in *Angel-Court*; which they accounted as belonging to the Defendant *Mary the Infant*, for whom they were entrusted; and having applied the Rents and Profits for paying Debts, and for the Maintenance of the said *Mary the Infant*, afterwards upon a Contest in the Spiritual Court the said Estates in *Barnaby-Street*, and *Angel-Court* were adjudged to be no Part of the Estate of the said *John Bullock*.

Because the Overseers of *Walmore's* Will did on the behalf of *John and Sarah* his Children, before *Mary* their Mother married with *Bullock*, come to an Agreement with her, that those Children should have 290 l. in full Satisfaction for their Interest in the Houses in *Angel-Street*, which was to be raised out of *Walmore's* personal Estate, and which was afterwards paid to those Children according to the said Agreement; and yet the Executors of *John Bullock*, claim the Houses in *Angel-Street*, as well as those in *Barnaby-Street*, in Trust for *Mary the Infant*, and Daughter of *John Bullock*, as the personal Estate of her Father *John Bullock*.

¶ *Mary Bullock* the Widow, formerly *Mary Wade*, and *John Bullock* the Infant, entitle themselves to all the Houses, for that the Houses in *Barnaby-Street* were devised by *Haxford* to *Walmore* whom he made his Executor; that *Walmore* made his Wife *Mary* Executrix, and died, that she married *Bullock*, and afterwards the Leases of those Houses in *Barnaby-Street* were surrendered, and new Leases taken, for the same were then *Bullock's* Estate, and therefore, she and her Son *John Bullock* ought to have their Share thereof by the Custom of *London*; for that the said *John Bullock* her Husband was a *Freeman*.

And as to the Houses in *Angel-Street*, it was insisted for them, that *Mary, the Widow of Walmore*, purchased them from *John and Sarah Walmore*, to whom they were devised by the said *Walmore* their Father, so that she was possessed thereof in her own Right; and having afterwards married *John Bullock*, he paid Part of the Purchase-Money, and took a Release from *John and Sarah Walmore* in his own Name.

On the other side it was said for *Mary Bullock the Infant*, that she is the Daughter and Heir of *John Bullock*, by *Mary the Widow of Walmore*, and ought to have the Benefit of all the Houses being her Mother's proper Estate; for that her Father had the Houses in *Angel-Street* as a *Purchaser* thereof; and that she (the

Infant) is entitled to the Houses in *Barnaby-Street*, by Virtue of the Administration granted to the Plaintiffs *Bucknall and Hicks* in Trust for her, both of the Estates of *Haxford* and *Walmore*, and his Widow; and that the other Defendants are not entitled to the same, either in Law or Equity, nor can the said Houses be taken to be any Part of *Bullock's* Estate.

This being the Case, a Bill was exhibited to have a Determination of the distinct and separate Interests of these Children, who had several Fathers, as aforesaid.

And upon hearing the Cause, it was decreed, that *Mary Bullock and John* her Son have no Title to the Houses in *Barnaby-Street*, but that *Mary Bullock* the Infant, who was the Daughter of *John Bullock* by *Mary* the Widow of *Walmore*, was well entitled to them by Virtue of the Administration granted to the Plaintiffs in Trust for her.

But the Houses in *Angel-Street* were clearly the Estate of *John Bullock*, he having in Pursuance of the Agreement made with *Walmore's* Children, paid Part of the Purchase-Money, and got Releases from them; therefore the Plaintiffs were ordered to account for those Houses as *Bullock's* Estate, and likewise an Account to be taken of the several Estates, as aforesaid.

William Blyffe, Esq; Plaintiff.

Henry Sayers, Esq; William Cherry, Gent. Administrator of Joan Blyffe, Robert Partridge, and Henry Partridge Infants, by the said Joan Blyffe their Mother and Guardian, & eontra, Defendants.

The Wife before her Marriage with the Plaintiff her second Husband, having reserved all her personal and real Estate to her own Disposal, and after Marriage, having borrowed Money, and furnished an

THE Plaintiff *Blyffe* married *Joan Partridge* a Widow, who was seised in Fee of several Lands of the yearly Value of 500*l.* as she was one of the Daughters and Coheirs of *Robert Jaques*, and she was likewise possessed of a great personal Estate in ready Money, Plate and Jewels in her own Disposal, and had likewise Power to dispose of the Interest of 6650*l.* which she did to her 3 Children by a former Husband; but before her Marriage with *Blyffe*, it was proposed by her, and he assented and agreed, that all the Money due and payable to her upon Securities, or for which there was no Security then taken, and all other her Goods and personal Estate, and all the Rents, Issues and Profits of her Lands, whereof she or any other Person in Trust for House, the Husband was discharged from paying the Money, and the Trustees were decreed to pay it out of her own Estate, and to return the Jewels he gave her before Marriage, &c.

her,

her, then were or afterwards should be seised or possessed, should be reserved to the sole Disposall of the said *Joan*, and if the Plaintiff *Blysse* should be excluded from having any disposing Power thereof, or of the Proceed or Profits thereof.

And by Indenture *Tripartite* dated 8 May 1673, and made between the said *Joan* of the first Part, the Plaintiff *Wm. Blysse* of the second Part, and the Defendants *Sayers* and *Cherry* of the third Part; she the said *Joan* by the Consent and Approbation of the Plaintiff *Blysse* her intended Husband, did assign and set over to them the said *Sayer* and *Cherry*, all her Lands and Securities for Money; particularly those in a Schedule annexed to the said Deed, and all her Jewels, Rings, Goods and Chattels whatsoever.

In which said Indenture, the Plaintiff *Wm. Blysse*, covenanted, that the Trustees should enjoy the same, and dispose thereof as the said *Joan*, (whether sole or married) should by any Writing under her Hand and Seal, in the Presence of two Witnesses appoint, and that it should be lawful for her to make a Will.

Afterwards the Marriage took Effect, and then the Plaintiff *Blysse* at the Request of *Joan* his now Wife, took a House at *Putney*, (she declaring it should be no Burden to him) and this was for the Term of 21 Years, and at the Rent of 33 *l. per Annum*, and 30 *l.* paid for a *Fine*; and she declaring that the said Rent and *Fine*, and the Repairing, and Beautifying, and Furnishing the said House, should be paid out of the Rent of the Estate, and that the House and Furniture should be at her Disposall, as the Rest of her Goods were by the aforesaid Agreement before Marriage.

Accordingly Workmen were employed in beautifying and repairing the House, and several valuable Goods were brought to furnish it, without consulting the Plaintiff, who in Strickness of Law, is chargeable therewith, because done during the *Coverture*; but that in Equity, he ought to be discharged thereof, because she agreed that it should be paid out of her Estate.

But she, before she had discharged or paid the Workmen, and for the Furniture, died possessed of Goods of great Value, in and about the said House, some whereof were her proper Goods before Marriage, and other Part was bought afterwards, and intended to be paid out of her own Estate.

That she in her Life-time, and pursuant to her said Agreement before Marriage, did by Deed dated in September 1673, direct the said *Sayer's* and *Cherry* to dispose of her Money and Estate in Manner as therein mentioned, and amongst other Things to pay to the Plaintiff 1000 *l.* out of her Estate, and as to other of her Goods, Plate, Jewels, &c. not otherwise disposed, she gave the same

same to her Daughter *Joanna*, together with her Goods in the House at *Putney*.

The Trustees took Orders about her Funeral, and possessed themselves of her Goods, Plate, Jewels, &c. and all other her personal Estate, as well that she had before Marriage as after, and the Plaintiff on his Marriage being called on to serve as *Sheriff* for *London* and *Middlesex*, she desired him to *Fine*, promising to pay one half of such *Fine* out of her own Estate; and accordingly he paid the *Fine* of 400 *l.* to be excused from that Office, and *Joan* (in the Absence of the said Trustees) borrowed 400 *l.* of one *Brown* a *Scrivener*, which was received by the Plaintiff's Servant, but by her Direction, and 200 *l.* Part thereof was by her Order paid to the Plaintiff in Discharge of half the *Fine*, and the other 200 *l.* she received her self, and she likewise received the Profits of all her own Estate during the Coverture, and disposed thereof at her Will and Pleasure.

And now the Plaintiff exhibited a Bill to be discharged of the said 400 *l.* borrowed by his Wife, and of the Rent of the House at *Putney*, and for all Money disbursed about the said House, and the Furniture thereof, and the growing Rent, and all Monies received by his Wife for Rent of her own Lands during the Coverture, and from all Suits concerning the Premises, that may at any Time happen; and that he may have all such Jewels which she had from him when he courted her, which were only to be worn by her as Ornaments whilst she was his Wife, (she having on her Death-bed declared they belonged to the Plaintiff) and to have the 1000 *l.* paid to him according to the said Deed, and to be discharged from the Expences of her Funeral; that being managed by her said Trustees.

Upon the whole Matter, and upon the cross Bill of the Trustees exhibited against the Husband, to discover what he had received of his Wife's Estate, and his Answer unto it, and upon the Proofs in both Causes;

The Court declared, that the Plaintiff ought to be discharged of the 400 *l.* borrowed by his Wife of the said *Brown*, and that it ought to be paid out of her Estate, and that he ought likewise to be discharged of what Money he received out of her said Estate, because it appeared, that he had received and paid it by her Order.

That since the *Putney House* was taken, repaired, beautified and furnished by her Order to accommodate her self and Children, what remained unpaid for Rent, and the growing Rent, and what was due and unpaid to Workmen, ought to be paid out of her own Estate, and the Plaintiff shall be discharged from the same, and that the Lease of the *Putney House* shall be assigned by the Plaintiff to the Trustees, and they to enjoy the same, and to dispose the Goods and Furniture thereof; and they are likewise to discharge the Funeral Expences out of her own Estate.

That

That the *Necklace of Pearl and other Jewels* which appeared to be given by him to her before Marriage, (whether before or after the Executing the said *Tripartite Indenture*) ought not to be accounted any Part of her Estate; but to be returned to the Husband according to her Declaration, on her Death-bed.

And it appearing that 200 *l.* Part of the 1000 *l.* was paid, the remaining 800 *l.* was decreed to the Plaintiff to be paid out of her Estate as soon as the same can be raised; and that the Trustees shall be indemnified, observing the said Directions.

Sarah Dean, *Widow and Administratrix of Edward Dean her late Husband, Plaintiff.*

Edward Gavell, Thomas Briggs, Richard Mariott, and William Dean, *Defendants.*

THE Case was, *Edward and William Dean*, the Sons of *Edward Dean*, were by his last Will made Executors and Copartners of his Estate, but without any Benefit of Survivorship.

Bill to have an Account of the Sale of Goods taken in Execution at an

under Value, and of the Equity of Redemption of a Mortgage, and of Money received to Compound the Debts of the Plaintiff. The Defendant pleads, that before he bought the Goods of the Sheriff, and afterwards they were offered to the Plaintiff at the same Price for which he bought them; and likewise pleads a Release of the Equity of Redemption of the Mortgage, and a general Release from the Plaintiff for all Things to such a Day, &c. the Plea was allowed to be good.

Edward Dean the Son, married the Plaintiff *Sarah*, and afterwards died Intestate; and she having obtain'd *Administration*, exhibited her Bill to be relieved against a supposed Fraud and Breach of Trust; and that she might have a Moiety of what her Husband possessed in Partnership with his Brother *Wm. Dean*, who by Combination (as she Suggests) with the Defendant *Briggs*, and with one *Baxter* who had a Judgment for 600 *l.* against her Husband, procured the said *Baxter* to take out a *Fieri Facias*, which was done accordingly, and the Goods of her Husband taken in Execution to the Value of 1000 *l.* and afterwards sold to the Defendant *Gavell* for 250 *l.* of which she now Demands an Account of the said *Gavell*; and likewise an Account of the Equity of Redemption of a Mortgage of a Wharf by her said Husband's Father.

Gavell, one of the Defendants pleads, that before he bought the said Goods of the Sheriff, they were offered to be sold to the Plaintiff at the Price he paid for them, and after he had bought them, he himself offered them to the Plaintiff, paying him the Money which they cost him; but that now, by Virtue of the Bill of Sale which he had from the Sheriff, he had disposed them to other Persons.

And

And as to the Mortgage he pleads, that he having bought it in, and had it assigned to him, the now Plaintiff, and *William Dean* the Defendant, did in *January* 1668, in Consideration of the Sum of 600*l.* to them paid, release the Equity of Redemption to him, and gave him an Acquittance or Receipt for the said Money, and denied Combination, and averred that the *Bill of Sale*, and the *Release* were fairly, and without Fraud obtained.

Briggs the other Defendant pleads, (the Bill being to call him to Account for several Sums of Money received of the other Defendant *Gavell* to compound the Debts of the Plaintiff, and of *Wm. Dean*;) that he had a general Release under the Hands and Seals of the Plaintiff; and the said *Dean* for all Things transacted and done between that Time and the *9th of March* 1668, and that there is no other Part of her Estate, or of the Estate of the said *Wm. Dean*; besides what was taken in Execution, and otherwise disposed, but only what Debts are due and owing to them; and that by Articles executed by them, it was agreed that the Plaintiff should have a certain Debt (in the Plea mentioned) amounting to 556*l.* for her share of the said Debts; and that *Wm. Dean* should have all the rest, and that the Articles are mostly performed, and that they were to the Advantage of the Plaintiff, so that as to what he hath received since the Date of the Release he is accountable to *Wm. Dean* alone, and not to the Plaintiff, and that the Release and Agreement by the Articles were fairly obtained without any Fraud; and that by his Answer he hath given an Account of what Money he received to compound the Debts of the Plaintiff, and of *Wm. Dean*.

Both these Pleas of *Gavell* and *Briggs* were allowed by the Court.

John Innocent, and Margaret his Wife, *Administratrix* of Mary Frith, Plaintiff.

Richard Tayler, and Elizabeth is Wife, Defendants.

Legacy devised to one, to be paid on a certain Day, the Legatee died before that Day came, it shall go to the Administrator, &c.

THE Case was, *John Frith* by his last Will devised to *Mary Frith* the Sum of 100 *l.* to be paid to her on the *29th Day of Sept.* 1668, and this was charged on certain Lands devised to the Defendant *Eliz. Tayler*, of which said Lands she and her Husband in her Right were possessed. *Mary Frith*, the Legatee, died before the said Legacy became payable, and *Margaret* the Wife of *John Innocent* the Plaintiff administered to her, and now they exhibited this Bill for this Legacy; the Defendant would have avoided

avoided the Payment, insisting by their Counsel, that it was not demandable by the Administratrix, because her Intestate *Mary Frith* had it upon a Condition which was now dispensed withal by the *Act of God*, (*viz.*) by her *dying* before the Time of the Performance of the said Condition, which was now become impossible to be performed.

But the Court was of Opinion, that an * Interest in this Legacy was vested in *Mary Frith* by the Will, and by Consequence it shall go to her Administratrix, and decreed the same accordingly, with Damages from the Time of exhibiting the Bill.

* In all Legacies 'tis necessary to distinguish two Effects of the Right of the Legatee, (*viz.*) one which renders him Master of the Thing devised, so that he may demand the Delivery thereof immediately, or not demand it till a certain Time, and the other which puts him in a Condition to demand the Delivery.

The first of these Effects is, that then the Time is come, in which the Right of the Legacy vests in the Legatee, for then the Legacy is due; and in such Case, if the Legatee dies before he hath received the Legacy, 'tis, by the Civil Law, transmitted to his Administrator, now in that Moment of Time when the Testator dies the Right to the Legacy vests in the Legatee; and tho' there is a Time fixed for the Payment of it, yet since the Legatee hath acquired a Right by surviving the Testator, he transmits that Right to his Administrator, whether he die before or after that Time. *Dom. 2 Vol. 180, 181.*

Zachary Atwood, and Eleanor Davis, *Plaintiffs.*

John Hawkins and others *Defendants.*

THIS Bill was exhibited to compel the Defendants, as Executors of *Abraham Atwood*, (who was the Plaintiffs Father) to pay them a Legacy of 100 *l.* devised to them by their said Father, and to account for the Surplus of his Estate.

The Defendant *Hawkins* demurred to this Bill; for that he and one *Wright* were made Executors, *durante minore etate*, of *Nicholas Atwood* the Plaintiffs Brother, who attained his full Age, and soon afterwards died; so that the said Executorship being determined, some other Executor or Administrator ought to be called to answer who might possibly make out some sufficient Release or Discharge.

He demurred also as to the Account of the *Surplus*, because there are other Persons to whom the Defendants are liable to account as well as to the Plaintiffs, and they not Parties to this Suit, so that they may be put to unnecessary Trouble and Suit concerning the same.

The Court over-ruled the Demurrer as to the specifick Legacy, and ordered the Defendants to answer, but allowed the Demurrer as to the Demand of an Account of the Surplus, and that the Plaintiffs might bring a new Bill as to that.

James Hudson, Richard Fisher, and several other
*Tenants of the Manor of Wibthorp in the County
 of Cumberland, Plaintiffs.*

Sir George Fletcher, Defendant.

Bill to discover several antient Customs of a Manor, and for a Commission to examine Witnesses to perpetuate their Testimony.

THIS Bill was, to discover several antient Customs Time out of Mind within the Manor of *Wibthorp*, between the Lord of the said Manor, and the Tenants thereof respectively, and to have a *Commission* to examine Witnesses to perpetuate their Testimony, that the said *Customs* may be established, the Plaintiffs claiming a Right to the said *Customs*, as they are *customary Tenants* of the said Manor, &c.

The Defendant pleads, that the Customs are not to be examined in this Court, but triable at Law; and demurs, for that all the Tenants of the Manor are not made Parties.

The Defendant for Plea and Demurrer sets forth, that he is Lord of the Manor, &c. and that the Matters and Things in the Bill suggested, are not examinable or to be established in this Court, but are triable only at Common Law by a Jury, and that several of the Customs alledged in the Bill are unreasonable, and that the Plaintiffs are not all the Tenants of the said Manor, but that the Rest of the Tenants ought either to be Plaintiffs or Defendants to this Suit, before the said Customs can be examined.

The Court held this Plea and Demurrer to be insufficient, except such Part of it which relates to the Customs being established here, and over-ruled the same so far as to order an Answer to the Customs and other Matters charged in the Bill whereby to bring the same in Issue, but as to that Part of the Demurrer, that the Customs ought not to be established in this Court, the Benefit thereof is reserved to the Defendant at the Hearing of his Cause, and the Plaintiffs are at Liberty to amend their Bill, and to add such of the Tenants (who will give them Letters of Attorney so to do) to be Plaintiffs to their Bill, and the Rest of the Tenants Defendants thereunto.

William

William Doughty, *Gent. Plaintiff.*

John Stiles, George Keat *and* Edward Booker, *Executors of* John Short *and* Ralph Fitzgerald, *Defendants.*

THE Case was, *Hudson* and *Short* were *Woollen-drapers*, the one in *Norfolk* and the other in *London*, and they trading together in Cloth *Hudson* became indebted to *Short*, who died, and then *Hudson* gave a Judgment of 400 *l.* to the Defendants, who were Executors of *Short*, and this was to secure a Debt of 220 *l.* due from *Hudson* to *Short*; afterwards *Hudson* devised several Lands and Tenements to the Plaintiff *Doughty*, and died, after whose Death the Executors of *Short* extended a Moiety of *Hudson's* Lands so devised to *Doughty*, who exhibited his Bill against them to be relieved against this Judgment; suggesting that *Hudson* had delivered back several Parcels of Cloth, amounting to the Value of 170 *l.* which *Short* had accepted in Part of this Debt, and had likewise paid him several Sums of Money, and yet the Defendants had extended those Lands, and made a Lease thereof to the other Defendant *Fitzgerald* for 7 Years, under the yearly Rent of 25 *l.* to redeem which Lease and to bring the Executors to an Account for the Cloth and Money received, was the Purport of the Bill.

A Judgment-Creditor having extended a Moiety of the Lands, made a Lease thereof for 7 Years, reserving the full Rent, this Lease shall not be impeached in Equity.

The Court was of Opinion, that this Lease ought not to be impeached, but decreed the Executors to account for the Goods and Money received of *Hudson* by their Testator, and for the Profits of the Lands before the Lease, and for the Rent of 25 *l.* per Annum, after the Lease, and that the Defendants shall have just Allowances, and Costs likewise, unless the Plaintiff can falsify their Answer in any material Part thereof.

And on paying what is due to the Defendants they shall acknowledge Satisfaction on the Judgment, and release and convey the extended Premises to the Plaintiff, free from all Incumbrances made by them except this Lease.

Mary, Jane, Rebecca and Elizabteh Catchmay,
Daughters of Christopher Catchmay, Plaintiffs.

Edward Nicholas and Judith his Wife, and Elizabeth Morgan, Defendants

Devise of a
personal E-
state to one
for Life, and
after the
Death of the
Devisee to
another,
good.

THE Case was, *Anne Catchmay*, who was Aunt of the Plaintiffs, did, by her last Will dated in the Year 1662, devise to her said four Nieces, *Mary, Jane, Rebecca and Elizabeth Catchmay*, in these Words.

Iff. I devise all my Estate, &c. to my Sister Katharine Catchmay during her Life (who was likewise Executrix) *and after her Decease, then I give 400 l. apiece to my four Nieces*, (naming them) which Estate did consist in personal Things; and soon after the Devise thereof, as aforesaid, the said *Anne* the Testatrix died, and now the Nieces exhibited a Bill for their respective Legacies.

The Cause was heard at the *Rolls*, where the Counsel for the Defendants insisted, that this was a void Legacy to the respective Legatees, it being the Devise of a Remainder of a personal Thing after the Death of another, to whom it had been already given.

The Master of the *Rolls* referred this Point to Justice *Ellis* for his Opinion, which was, that the Plaintiffs ought to have Relief, and thereupon it was so decreed at the *Rolls*, from which Decree the Defendants appealed to the *Lord Keeper*, who was of the same Opinion; for that *Katharine*, by the Will of *Anne* her Sister, was to receive the Profits during her Life only; and was therefore in Nature of a Trustee for these Legacies bequeathed to the Plaintiffs to be paid after her Death.

Decreed, that *Judith*, who was the Wife of *Edward Nicholas*, and Executrix of *Katharine Katchmay*, do deliver up all Bonds and Securities for Money due to the said *Anne Catchmay* the Testatrix; and that the Plaintiffs shall have Liberty to put the same in Suit, in the Names of the said *Nicholas* and *Judith*, (giving them Security to indemnify them for Suing in their Names) to recover the Money due thereon towards Satisfaction of their Legacies; and also they shall account for all the Assets of *Anne* which came to *Katharine*, and afterwards to the said *Judith* and *Nicholas*, or either of them.

Edward

Edward Lord Herbert, Baron of Cherbury, *and the*
Lady Elizabeth *his Wife, and* William Brownlow,
Esq; and Margaret *his Wife, Plaintiffs.*

William Mountague, *Esq; and* George Mountague
and others, Defendants.

THIS Bill was, to discover the Will of *Sydney Mountague*, Releases
Esq; and to have an Account of the Rents and Profits of pleaded, but
his real and personal Estate, which belongs to the Plaintiffs in the Defen-
Right of their said Wives. dants were
ordered to
answer.

The Defendant *George Mountague*, as to so much of the Bill
as seeks an Account of the Rents and Profits of the Lands and
Household-Goods of *Sydney Mountague*, and which were received
by the said *George*, he pleads *two Releases* under Hand and Seal,
(*viz.*) one dated 5 Aug. 1673, by which the Plaintiff *Brownlow*
and his Wife, and the other dated 25 Aug. following, by which
the *Lord Herbert and his Lady* did release to the Defendant,
his Heirs, Executors, &c. all his and their Lands, Tenements,
Goods and Chattels, and particularly the Manors and Lands therein
mentioned, of and from all Actions, Claims and Demands what-
soever.

It was insisted by the Plaintiffs Counsel, that these Releases
were to extend only to the Portions of the two Ladies, the Wives
of the Plaintiffs, which had been paid by the Defendant, and it
appeared, on reading this Plea, that the Defendant did not set
forth, that there was any Discourse between them concerning the
Estate or Lands of the said *Sydney Mountague*, when or at the
Time these *Releases* were executed.

The Court ordered, that the Word *Plea* should be stricken out,
and that the Defendants should answer the Bill; but as to the o-
ther Part of the Bill which demands an Account of the Rents and
Profits of the Lands, the Defendant is not to answer, unless on
the Hearing the Court think fit to decree an Account thereof.

East-India Company, *Plaintiffs.*

William Blake, *Defendant, & econtra.*

THE Defendant *Blake* was *Factor of the*
East-India
Company
not allowed
to place any
Thing to Ac-
count under
the Head of
General Ex-
pences, &c.
to discover in what prohibited Goods he had traded there; so that
they might have Evidence at Law in an Action of Debt upon a Co-
venant

tenant now brought by the Company against him, to recover certain Sums which he had covenanted to pay, if he traded in such prohibited Goods and; to be relieved against his Breaches of Trust whilst he was their *Factor in the Indies*, and concerning several Exceptions they had to his Accounts.

The first Point was concerning a Debt of 7000 *Rupees*, being 875 *l. Sterling*, which the Company paid in *India*, for one *Billage*, who died so much indebted in that Countrey, and which the Company, by the Course of Proceedings there, was obliged to pay, which the Defendant, (who is *Billage's* Executor, and having plentiful Assets) ought to repay to the Company with Damages, and agreed so to do when he went abroad in their Service in *January 1661*.

Blake denied that the Company paid any such Debt for *Billage*; but it appearing otherwise on Proof, and particularly by one *Chamberlain's* Letter,

The Court decreed, that *Blake* was liable in Equity to repay that Sum with Damages, even upon his own Agreement with the Company; but his Counsel insisting, that this Letter was got by Surprise, they desired a Copy thereof, and to be farther heard another Day, which was ordered accordingly.

The second Point was, concerning 15000 *Royals of Eight*, which the Company charged *Blake* to have received of Sir *Thomas Chambers* in *India*, for the Use of the Company in *December 1662*, but did not bring it to Account till two Years after, for which they demand Interest for that two Years; and that when he did bring that Sum to Account, it was at the Under-values mentioned in the Bill.

Blake answers, that he had no Orders from *Chambers* to bring those Pieces of Eight into Account till the Year 1664, at which Time he accounted for them.

The Court was of Opinion, that *Blake* was not chargeable with this Interest, but decreed him to answer as to the Under-rating some Goods and Over-valuing other; and as to that Matter he answered, that the Prices charged are the same for which the Goods were bought and sold in *India*, excepting only some extraordinary Charges usual in those Parts, which are cast in and charged in the Prices of the Goods bought and sold there, which Charges are necessary for the Affairs of the Company, (*viz*) in House-keeping and entertaining the Great Men of that Countrey, and otherwise.

The Court declared, that it was unreasonable for a *Factor* to be a Judge of his own Expences, and that there would be no Measure in Accounting, if that should be allowed; and if immoderate Expences in House-keeping, or otherwise, should be cast into and concealed under the Prices of Goods.

Therefore *Blake* ought to account to the *Company* for what he hath placed to their Account for Goods bought for them, and for more than he really paid, and for what he hath placed to their Account for Goods sold for them, and less than he really sold to others.

And an Account was ordered accordingly upon these Directions, (*viz.*) what *Blake* shall make out in particular to have been by him expended for the *Company* (and which hath not been brought to Account under the Head of *General Expences*;) shall be allowed him; and all Sums under 40 *l.* shall be allowed him upon Proof of Payment by his own *Oath*.

And that if he hath expended any great Sums in *Entertainments* and hath kept a Particular thereof, and shall make Oath that the same were really, and *bona fide*, expended, and necessary in his Judgment for the Affairs of the *Company*, the Master shall allow the same, or certify them specially as he shall see Cause.

The third Point was, about *Looking-glasses* and other *Toys*, which *Blake* charged to the Account of the *Company* at 40 *l.* per *Cent.* more than the same were worth in that Countrey.

The Court decreed, that the Master should examine the Matter, and if he find those *Toys* over-rated more than what they were worth in *India*, then *Blake* is to satisfy for so much.

The last Point was, upon *Blake's* cross Bill to be relieved against an *Action of Covenant* brought against him by the *Company* for 26000 *l.* upon which the Case was thus; 'tis a Custom for the *Factors of the Company* to enter into Covenants to them with great Penalties, to pay extravagant Prices for certain Goods therein mentioned, if they should trade in such Goods for themselves, or for any Person or Persons, except for the *Company*, which Covenants the said *Blake* would not have sealed, but that some of the *Company* told him it was only a Thing of Course, and to restrain their *Factors* from excessive Trading in prohibited Commodities; and that the Penalties were never exacted or taken in *Specie*, nor insisted on farther than to satisfy the *Company* the real Damage they might sustain by such private Trade.

A Factor having agreed and stated the Damages in Case he shall trade in such Goods, and having covenanted to pay such Damages in Case he shall trade in those prohibited Goods,

shall never be relieved against such a Covenant if he be sued on a Breach thereof.

And that he had some Licence or Permission of the Members of the *Company* to deal in an *Inland Trade* in the *Indies* with some of the prohibited Goods, which he might do with such Prudence and Moderation, so as the *Company* might not be damaged by it; and it was intimated to him, that if he should find a good Bargain was to be had of any prohibited Goods, and should have nothing in his Hands of the said *Company* to deal for it, that in such Case it would be a good Service to them to lay out his own Money for such a *Bargain*, so as he would let the

Company have it again at a moderate Rate, and would export no such Goods into *Europe* but on the Company's Account.

Whereupon at a Time when he had nothing of the Company's in his Hands, he did (as other of their Factors had done) trade in *India* in *Taffeties*, *Salt-petre*, and *Callicoes*, and other prohibited Goods, with his own Money, but for the Benefit of the Company, for whom he put them off at a moderate Gain to himself, and disposed of none but to the *Company*, and if he had not purchased them with his own Money the *Company* could never have them, because the *Dutch*, and other Merchants, would have contracted for them; so that when the Ships of the Company should come to *India* there would have been no Freight for them; and he let the Company have these Goods at an easier Rate than they could have bought them, and never charged them for more than the Price current at the *Port-Towns* there, where he placed them ready to freight the Company's Ships when they should arrive.

And as for prohibited Goods of the Growth and Manufacture of *Europe*, such as *Quicksilver*, *Vermilion*, *Cloth* and *Lead*, he never exported any of those Goods out of *Europe*, or bought any but of the *Company*, and never gave for them under the *Price current* at the Ports, and it was for the Benefit of the Company to take those Goods off their Hands, which if he had not done they could not have been disposed to their Advantage.

And if he had not laid out his own Money in prohibited Goods, and taken the *Company's European* Goods off their Hands, he could have laid it out to greater Advantage to himself, by buying Goods there which were not prohibited.

And yet the Company, taking Advantage of this Covenant, and of his Transgressing against their Licence, have brought an Action of Covenant, and insist upon the Penalties, against which this Bill was brought against the Company by *Blake*, that he might be relieved, and that they might be put to an Action of Covenant, and try at Common Law what they were really damnified.

But on the other Side, the Company having, by many Years Experience, found it mischievous to them that their *Factors* should trade in the same Commodities; for that the Markets in *India* for *European Goods* were, by that Means, brought low, and the Markets for *India Goods* raised, and for that their *Factors* had many secret Opportunities to abuse the *Company*, by keeping their Stock and Goods by them, whilst they employed their own, and by putting all bad Debts for Goods trusted upon the Company, and taking the good Debts to themselves, and for that the said *Factors* kept the choicest *India Goods* for themselves, and put off the worst to the Company, and by taking
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all good Bargains to themselves, and putting the worst on the Company; they found it necessary for the *East-India* Trade; and have for many Years past restrained their *Factors* from trading in certain Goods, both of *Europe and Indian Growth and Manufacture*, which are proper for the *Company* to trade in; and to give them Liberty to *trade* in any other Commodities; the richest sort of Goods, which are prohibited them to trade in, are *Ambergreese, Musk, Civet, Bezoar, Diamonds, Pearls, precious Stones, &c.* in which, and other Goods particularly reserved to the *Company*, they formerly took Bonds of their *Factors* in great Penalties conditioned, that they should not trade in those Goods; and yet notwithstanding such Bonds the *Factors* did trade in them at Pleasure; because when they returned, and the Bonds were put in Suit, they were relieved in this Court against the Penalties; and Trials at Law were directed to prove their Damages, which at that Distance (the *Company's* Affairs did lay) was impossible for them to do.

And therefore for *sixteen Years* past, they have restrained their *Factors* by agreeing with them before they depart from *England* upon *certain stated and adjusted Damages* in Case they shall trade in the said prohibited Commodities; and which were equally and indifferently estimated to be reasonable in respect of the great Damages the *Company* might sustain by such a private Trade in prohibited Goods, of which the *Factors* were generally guilty, and which by an Agreement amongst themselves were concealed.

This Course was advised by *Learned Counsel*, for that the *Factors* would be thereby concluded by their own Agreement to such a Measure of Damages which they themselves had ascertained; and so the *Company* by their Counsel insisted, that the said *Blake* by his own free Consent had made such an Agreement, and having broken his Covenants could have no Relief in Equity against his wilful and voluntary Acting; and that if this Court should interpose, it would have a very ill Effect on the Affairs of the *Company*, and their Trade to *India*.

That the Payments these *Factors* were to make for such trading contrary to their Agreements and Covenants were not intended to be in the Nature of *Penalties*, but adjusted Damages agreed on before-hand between the *Company* and them; and that they were intended to restrain them from Trading at all in such Goods, by reason of the general Mischief thereof to the *Company*; and they have always required these Payments agreed on by their *Factors*, tho' sometimes they have remitted Part upon Account of their other Services.

And it was denied, that *Blake's* Trading in prohibited Goods, was for the Benefit of the *Company*, because when he bought those Goods, he had Effects of the *Company* in his Hand; but admit-

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ting he had not, yet the *Company* never wanted Credit in *India*, so that he bought the Goods for his own Benefit; for he put them off to the Company at 50 *l. per Cent.* Profit.

Neither could the Price current at the *Port-Towns in India*, when the *Company's* Ships came thither be any Rule for him to go by, because he was obliged to buy for the Company at the best Hand; and as he had ordered the Matter he had made the Price current their as he pleased, for by engrossing so great a Quantity of prohibited Goods to himself, he could set what Price he would upon them.

That this Restraint is necessary to support the *East-India Trade*, and agreeable to the Policy of the *Company's Charter*, and to the Usage of the *Dutch*, and other Trading Nations to *India*.

The *Lord Keeper* declared, that the natural End and Design of this Covenant was, to restrain the Factor from Trading at all in prohibited Goods and Commodities, and this was primarily intended; and that the Sums agreed to be paid for Trading were secondarily intended as a Hedge for securing that Covenant, which he compared to a Covenant made by the Lessee; that if he break up or plough such Lands, he shall pay 5 *l. per Ann. for every Acre*, and there was never yet any Relief given in this Court against such a Covenant.

It seems reasonable that the Company should put some Restraint upon their Factors and Servants, otherwise they cannot subsist and carry on their great Trade to the *Indies*; and if they could not put an absolute Restraint on them from Trading in prohibited Goods by enforcing them to such Measures and Payments as the Factors themselves had agreed to for Trading therein, there could be no other way for the Company to restrain them, the Consequence whereof in Time might be the Loss of all the *English Trade in India*.

And though the Payment of the Sum, for which the Company have declared at Law, doth amount to 26000 *l.* which is a very great Sum; yet 'tis uncertain how much thereof the Defendant may pay; and therefore the Court would not relieve him, but dismissed his Bill.

Term. Sanct. Mich.

26 Car. 2. Anno 1674.

William Parker, *Gent. Plaintiff.*

Rowland Dee, *Defendant.*

*1. l. 2. Cha. Cas.
200. Nottingham
Mss. Rep. Case 129.*

THE *Lord Keeper* heard this Cause after a Decree signed and enrolled, because it appeared that the Plaintiff, who obtained it, procured it to be signed and enrolled after a *Caveat* entered, as it appeared by a *Certificate* from one of the *Six Clerks*.

Administra-
tion repeal-
ed and
granted to
another, to
whom the
first Admini-
strator ac-

counted in the *Prerogative Court* for the Intestate's Estate; he is thereby discharged from any further Account.

There was a former Decree in this Cause signed and enrolled, but after a *Caveat* entered.

The Bill was brought by the Plaintiff against the Defendant, as *Administrator* of *Charles Everard*, to have Satisfaction of a Debt of 700 *l.* the Money being lent by the Plaintiff to the *Intestate Everard* in August 1665, together with the Interest thereof, and to have a Discovery of *Everard's* Estate, which came to the Hands of the Defendant.

But it appearing that *Everard's* Estate would not near satisfy all his Debts; and that the Defendant had paid more to his Creditors then he had received, and that before the first Hearing of this Cause, the *Letters of Administration* which had been granted to the Defendant were repealed, and new Letters of Administration granted to *Charles Cornwallis, Esq;* to whom the Defendant had accounted in the *Prerogative Court*, and had delivered to him all the Books of Accounts, and other Things belonging to *Everard's* Estate; therefore he ought to be discharged from all Matters concerning that Estate, and from all Accounts thereof.

And the Court was of that Opinion, and dismissed the Bill, and ordered that the Decree already obtained be set aside, and the Enrollment thereof to be vacated.

John Rutland, *Plaintiff.*

Sir Edward Brett and others, Defendants.

The Defendants plead a former Decree made in this Cause, and confirmed upon an Appeal, and demur, for that this Bill contains the same Matter as the other.

THIS was a Plea, and a Demurrer to a Bill now brought by the Plaintiff, to undermine and set aside a Decree of this Court, in a Cause wherein the now Defendants were Plaintiffs against *John Evans* and others, Defendants, and which was for the same Matter contained in the Plaintiff's Bill now brought, which Decree was made by the *Master of the Rolls*, and confirmed upon an Appeal by the Lord Keeper, and which the Defendants now plead to this new Bill.

And they demur to it, for that of the Plaintiff's own Shewing the same Matters were in Issue in the said former Cause, and that they either were, or might have been examined upon the said original Bill, and that this Proceeding is against the Course of the Court, and tends not only to make Suits endless, but to introduce Perjury.

The Court allowed this Plea and Demurrer, and dismissed this new Bill absolutely.

Mary Lockley, Widow and Executrix of John Lockley, and David Lockley, Plaintiffs.

John Eldridge, *Defendant.*

Indentures of Apprenticeship, and a Bond decreed to be delivered up, and the Money given to the Master to be paid back.

THE Case was, *David Lockley* the Plaintiff was Apprentice to *John Eldridge* the Defendant, and had served four Years of his said Apprenticeship; but being very hardly used, he summoned his said Master before the *Chamberlain of London*, who directed the Apprentice to sue for his Indentures to be delivered up, which he did, before the *Lord Mayor in this Court*, and had a Verdict; afterwards the Defendant offered several Exceptions in Arrest of Judgment, which being disallowed as frivolous, the Judgment was affirmed, which was, that the said Apprentice should be discharged from his Master, and turned over to another for the Residue of his Term; that the Master should pay back a *Moiety of 35 l.* the Money given to put him out Apprentice, and should provide a new Master for him, which he refusing to do, a Bill was exhibited in this Court, that he might be discharged from his said Master, by delivering up the Indentures

of Apprenticeship, and the Bond of 100*l.* given by his Father for his Fidelity, and the Money repaid.

The Court being satisfied, that the Apprentice was oppressed, and very ill used by his Master, decreed that he should deliver up the Bond and the Indenture, and repay 15*l.* to the Plaintiffs with full Costs.

George Lee, *Merchant, Plaintiff.*

Sarah Bowler, *Widow and Administratrix of John Bowler, Defendant.*

John Bowler, the Defendant's Son, was Apprentice to the Plaintiff, who sent him to *Virginia*, and after he arrived there, the Plaintiff ordered one *Whitehair* who was his principal *Factor*, to turn over all his Effects in his *Plantation* there to this Bowler, consisting in great Quantities of *Tobacco*, *Negroes*, and other Goods; and that Bowler was to manage the same for his Master, which were of great Value, and which together with such Goods as were consigned to him from *England*, amounted to 6000*l.* and upwards; afterwards Bowler came to *London*, and being called on by the Plaintiff to give an Account of his *Factorship*, he refused; thereupon being threatned with an Arrest, he returned towards *Virginia*, but died before he came thither; and afterwards the Defendant administered to him who refuses to account, pretending that Bowler her Son had Lease from his Master, to trade during his Apprenticeship for himself, and that accordingly he did trade for himself, and had gained a considerable Estate.

Administra-
tor of a Fa-
ctor in the
West-Indies,
decreed to
account.

But the Plaintiff denying that he ever gave him Liberty to trade for himself during the Apprenticeship, the Court decreed the Defendant to account, and afterwards to resort back to the Court.

Elizabeth Mablety *Widow, Plaintiff.*

John Baker, *Executor of John Baker, Defendant.*

THE Bill was, to have a Money Legacy of 30*l.* and other specifick Legacies given to her by the last Will of her late Father.

Executor
decreed to
account for
Legacies,
though he

pretended a prior Title to the personal Estate.

The

The Defendant, who was *Executor of John Baker* the Father, pretended a *prior Title* to all his Estate, by Virtue of *certain Articles* dated in the Year 1651, made upon the Marriage of the Defendant, with the Sister of one *Hicks*, with whom he had a considerable Portion, and in Consideration thereof, and of the said Marriage, the Testator the Father agreed to settle and assign to the Defendant (his Son) all his Estate and Interest in such Lands, and to leave the Defendant all such Goods of which he should be possessed at the Time of his Death; and that the Marriage did take Effect, and the Portion was paid to the Father; and tho' he made such Will as in the Bill is set forth, yet he (this Defendant) took no manner of Notice thereof, nor proved the same.

But the Plaintiff alledging, that the Testator her Father left sufficient Assets which came to the Hands of the Defendant, besides what he claims by Virtue of the said Articles, and which ought to be applyed to pay the Plaintiff's Legacy with Damages and Costs; and for that, the Defendant had endeavoured to avoid the Payment thereof by concealing the Will.

The Court directed an Account for such of the Testator's Estate as came to the Defendant's Hands after the Testator's Death, and which is not included in the Articles, and if he hath sufficient *Assets* unadministred (and beyond what is included in the Articles) at the Time of the Bill exhibited; then it was decreed that he should pay the Plaintiff the said Legacy of 30*l.* with Damages since the Bill exhibited, and to deliver to the Plaintiff the specifick Legacies, and the Plaintiff to have her full *Costs* she shall swear to be at.

Henry Witham, *Esq;* Plaintiff.

Thomas Bland *and his Wife*, Defendants, and e-
contra.

Decree for Money, and the Lands were seque-
stred for Pay-
ment, which
Decree was
set aside, for
that the De-
fendant had
a Prior Title
by Statute
Staple, and
Judgment.

George Witham having in the Year 1660, conveyed the Lands in the Bill to several Persons in Trust, and for the Use of himself for Life, Remainders to *Henry Witham in Tail*, with several Remainders over, and having before that Time, (*viz.*) in the Year 1653, conveyed other Part of his Lands (now in Question) to certain Trustees, and their Heirs, to the Use of himself for Life, Remainder to *Elizabeth* (the Wife of the Defendant *Tho. Bland*) for her Life, Remainder to the Heirs of her Body, Remainder to the said *Henry Witham*, and the Heirs of his Body, Remainder

der over, &c. with a Power to revoke all or any of the Uses in the said Deed, &c.

The said *George Witham* did accordingly, in the Year 1660, revoke the Uses limited in the Deed Anno 1653, except for his own Life; and declared that the Trustees therein named, and their Heirs should stand seised, &c. to the Use of the said *Henry Witham*, and the Heirs of his Body; Remainder over, &c.

Anno 1667, *Elizabeth Bland* died without Issue, and in the Life-time of *George Witham* against whom she and the said *Thomas* her Husband had two Years before, (*viz.*) in the Year 1665, exhibited a Bill in this Court for a Debt of 5457 *l.* and had obtained a Decree, and a Sequestration was awarded against his Estate, who being only Tenant for Life, and now being dead, and the Plaintiff *Henry Witham* being a Creditor of the said *George* by Statute *Staple and Judgment* for above 6000 *l.* due to him long before the Defendants had exhibited their Bill, and obtained the said Decree, and being then also seised of the Lands in Question, as a Purchaser in *Remainder*, and the same being accordingly vested in him, and by Consequence his Title was Prior to the Defendant's Bill, and there being no Reason to charge his Lands with the Debts of *George*; it was insisted for the Plaintiff, that the Sequestration against his Estate, and all Orders and Proceedings thereon, might be absolutely set aside and discharged.

Which was decreed accordingly, for that *George Witham* who had Power by the Deed dated in the Year 1653, to revoke the Uses therein limited, had likewise Power by the same Deed to create new Uses; and for that the Title of *Henry Witham* is prior to the Defendant's Bill, Decree and Sequestration; and lastly since the said *George Witham* had only an Estate for Life, which is since determined by his Death, and thereby the Lands are lawfully vested in the said *Henry Witham*.

Darcy Launce, *Plaintiff*.

Marden and others, *Defendants*.

THE Plaintiff *Launce* entered into a Bond with the Defendant's Father and others, who were all Security for 100 *l.* lent in the Name of one *Ledgingham*, which by some Circumstances appeared to be the proper Money of *Marden* the Father, and *Ledgingham's* Name only used in Trust for him; and there being no Money Lent on the Bond in Question; and the Plaintiff third Person, but it was the Defendant's own Money, and it did not appear that any Money was lent; and yet the Plaintiff was prosecuted, but was relieved.

Bond in which the Plaintiff and the Defendant were bound, and taken in the Name of a

be-

being vexatiously prosecuted upon it by the Defendant; and a Verdict and Judgment obtained at his Suit against the Defendant for 203 l. contrary to an Order of this Court, upon the Plaintiff's giving a Recognizance to bring his Cause to a Hearing, who had exhibited a Bill to have this Bond delivered up and cancelled.

The Court decreed, that it shall be delivered up and cancelled, and Satisfaction acknowledged at the Charge of the Defendant, and the Recognizance vacated; and that the Plaintiff shall have his Costs, and a perpetual Injunction against the Defendant, and against the said Bond, and all other Securities given by the Plaintiff concerning the same.

James Roberts *and* Agnes his Wife, *Plaintiffs.*

James Gouch, *Defendant.*

THE Mother of Agnes the Plaintiff, did by her last Will devise to her said Daughter the Sum of 60 l. in this Manner.

ff. I give my Daughter Agnes 60 l. to be paid in two Years after my Death, in case I survive a Lease I have made of such Lands for 21 Years, and if I die before the Expiration thereof, then my Will is, that the said 60 l. shall be paid within two Years after the said Lease shall be expired; and if not then paid, that my said Daughter shall enter and enjoy the Lands until the same is paid.

Purchaser
for a valuable
Consideration.

The Testatrix died, and afterwards her Son and Executor, sold these Lands to the Defendant James Gouch, who confessed the Will, but would avoid the Payment of the Money, because he is a Purchaser for a valuable Consideration under the Son and Heir, and Executor of the Plaintiff's Mother, who (for ought he knows) might have paid and discharged this Legacy.

Benjamin Norcliffe *Esq;* and Penelope his Wife,
Plaintiffs.

Thomas Worsley, *the Son of the said Penelope,*
Defendant.

A Jointure
decreed to
be made, and
less than by
the Articles
in Marriage,
for that the
Plaintiff had

Thomas Worsley, the Father of the Defendant, and the first Husband of the said Penelope, did by Articles made on the said Marriage, and in Consideration of 800 l. Portion (since actually paid) covenant and agree to settle a Jointure of three hundred Pounds per Ann. on her, and afterwards he devised agreed to accept less when she was a Widow.

Lands to her of that yearly Value and died, and then *Thomas* the Defendant entered on all the real Estate, and possessed himself of all the personal Estate of his said Father, excepting only 30 *l. per Annum*, pretending that there were no such Marriage Articles; or if there were, that his Father had no Power to make the same, for that by some Settlements made by his Grandfather, to whom his Father was Heir, the Lands were vested in this Defendant, as a Purchaser paramount to the Title of his Father, who was never seised of any Estate whereby he was enabled to make any Jointure, nor to devise the same by his Will.

And now a Bill being exhibited by the Plaintiffs to have 300 *l. per Annum* settled on the Wife for her Jointure, and it appearing that *Penelope*, the Defendant's Mother, had in the Time of her Widowhood (*viz.*) in the Year 1664, agreed to accept Lands of the Value of 100 *l. per Annum*, in full Satisfaction of her Jointure, for that the Articles made by her first Husband to settle 300 *l. per Annum*, took up most of the Estate, the Whole being of the yearly Value of 450 *l.* and no more, and great Debts upon it, and the Defendant having maintained all the younger Children.

The Court decreed, that the Agreement in 1664, ought to be performed, but to avoid an Account for what was past, proposed, that if the Parties would submit to it, the Defendant *Thomas* should pay to the Plaintiff 600 *l.* at or before *Lady-day* next, and for the Time to come to pay the said *Penelope* 100 *l. per Annum* during his Life, to commence on *Lady-day*, as aforesaid, and to secure the same by Lands of 200 *l. per Annum*, Value, free from all Incumbrances, and the Master to settle it, and that the Plaintiff and his Wife shall not be charged with the Debts or Funeral of the first Husband farther than the personal Estate extended, and which came to their Hands, and that the Plaintiffs do execute a Release to the Defendant of all Title and Claim of Dower and Jointure in any of the Lands in the Bill mentioned, except what she is to enjoy by Virtue of this Decree.

Rice Pritchard, Son and Heir, and Administrator of
Edward Pritchard, and Williams and Thomas,
Plaintiffs.

Potts, and others, Defendants.

A prior Recognisance
was decreed
to a Purchaser for a valuable Consideration
without Notice, &c. to protect his Purchase.

THE Plaintiffs *Williams* and *Thomas* being Purchasers of Lands of *Daniel Pritchard*, who, in Consideration of 120 *l.* to him paid, had formerly granted an Annuity of 20 *l.* *per Annum*, issuing out of certain Lands to one *Calverly*, in Trust for the Defendant *Potts*, and at the same Time (*viz.*) Anno 1649, he entered into a Recognisance of 600 *l.* defeasanced for the Repayment of 120 *l.* to the said *Potts*, in some short Time after, which Sum was not paid according to the said Defeasance.

About ten Years afterwards, (*viz.*) Anno 1659, the said *Daniel Pritchard* agreed with *Potts* and *Calverly*, and one *Lort*, to sell Lands to the said *Lort* of the yearly Value of 60 *l.* in Consideration whereof *Lort* agreed to pay the said *Daniel Pritchard* the Sum of 825 *l.* and that *Potts* and *Calverly* agreed, as it was pretended, to accept of 120 *l.* Part of the Purchase-Money in Discharge of the said Annuity, and *Lort* was to pay the remaining 705 *l.* to the said *Daniel Pritchard*, but before *Lort* paid the aforesaid Sum of 705 *l.* he conveyed the Lands to the *Lady Jane Mansell*, and to one *Roger Lort*, two other of the Defendants, who now pretend that the Lands purchased by the Plaintiffs *William* and *Thomas* are subject to the said Annuity or Recognisance, and have caused a *Scire facias* to be sued thereon, and endeavour to charge the Plaintiffs Lands, tho' they are Purchasers for a valuable Consideration without Notice of this Recognisance, and therefore they exhibited a Bill to be discharged from this Annuity, it not being charged on the Lands which they had purchased of *Daniel Pritchard*, but only by the Recognisance which he gave to secure the Payment thereof.

Potts denied any Agreement made with the Plaintiffs to accept 120 *l.* in Discharge of the said Annuity, for that it was purchased not only for his own Life but for the Lives of the Wife *Mary Potts* and of the said *Calverly*, and payable out of the Lands purchased by *Lort*; and that in the Grant of the said Annuity he had Power to distrain and a *Nomine pœne* for the same; and at the Time of *Lort's* Purchase there was 356 *l.* thereof in Arrear, and therefore it was insisted for *Potts*, that it

was

was very improbable he should agree to accept 120 l. in Discharge of the said Annuity, and so great an Arrear thereof.

The Court being about to dismiss the Bill against *Potts* and *Calcerly*, the Plaintiffs offered to pay *Potts* what was in Arrear, and due for the Annuity, so that they might have the Benefit of his Security to reimburse themselves, which was ordered accordingly; but the Court would not stay *Potts* from proceeding at Law.

Then the Question was, who should pay the remaining Part of the Purchase-Money for the Lands purchased by *Lort*, but the Court would make no Order therein, because the Matter had not its full Course, it coming before the Court upon Bill and Answer; and therefore the Plaintiffs were left to reply as to that Part, and to bring the Cause to a Hearing again, which was afterwards done.

And then the Court decreed, that the said Annuity, and the Arrears thereof, were a just and clear Duty, and ought to be satisfied out of the Lands purchased by *Lort*, upon which it was originally charged; and this in Ease of the Plaintiffs, whose Lands are only bound by the *Recognisance* for Performance of Covenants, and that the same ought to be paid out of Assets of *Lort's* Estate in the Hands of his Executors, and where those Assets fail then it shall be paid out of the Profits of the Lands so purchased by *Lort* since the Bill, and which have been received by Sir *Edward Mansell*, *Dame Joan Mansell* or *Roger Lort*; and in Order thereunto directed an Account, but that *Potts* should not be involved therein, or stayed at Law to recover on the said *Recognisance*.

But the Plaintiffs *Williams* and *Thomas* offering (as before) to pay *Potts* 100 l. in a short Time, and to continue Payment of the *Annuity* till the Account was stated, and then to pay all the Arrears, so that they might have the Benefit of the Deed by which the Annuity was granted, and of the said *Recognisance* to reimburse themselves of what they shall pay to *Potts*, of what the Account shall fall short, and to have Satisfaction on the Land charged and on the *Recognisance*, which the Defendants not opposing was ordered accordingly; and that all Proceedings at Law against *Williams* and *Thomas* be stayed, unless they fail to pay the 100 l. to *Potts* in the *Middle Temple Hall* on the 10th Day of *January* next, and in that Case the Injunction to be dissolved; and that in casting up the Arrears of this Annuity the Master shall not have any Consideration of Damages, because the Lands originally charged therewith were sufficient to pay the same, and the Defendant *Potts* might have distrained.

James Whitlock, *Esq; Plaintiff.*William Mead, *Defendant.*

Bill to have
an Account
of a personal
Estate, &c.
and an Ac-
count was
directed by
the Court.

THE Plaintiff, in the Year 1667, being seised of an Estate in the County of *Cambridge* of the Value of 660 *l. per Annum*, and being possessed of Household-Goods to the Value of 1800 *l.* and Stock in Corn and Cattle worth 1500 *l.* as he alleged, and being indebted in the Sum of 2000 *l.* to several Persons, Part whereof, (*viz.*) 400 *l.* was upon Judgment; and intending to go beyond Sea, he settled his Estate for Payment of his Debts, reserving some reasonable Allowance for the Support of himself and his Family, and being indebted to the Defendant *Mead* in 335 *l.* intrusted him with his whole real and personal Estate under a particular Agreement made between themselves, (*viz.*) that the Household-Goods should be preserved for the Use of the Plaintiff, without being removed or sold, and that his Wife should continue in the House; and he gave the Defendant *Mead* a Statute of 1000 *l.* Penalty, in Trust to protect the Household-Goods from a Seizure by other Creditors, and gave him a Letter of Attorney, empowering him to sell his Stock and Corn, and to let his Lands, and to receive his Rents, which with good Management might have paid his Debts in a little Time.

The aforesaid Statute was defeasanced for the Payment of the Debt of 335 *l.* due to the Defendant *Mead*, and of a Debt to one *Bulstrode*, and of 100 *l.* more, of which 50 *l.* was to be paid to the Plaintiff's Wife, and *Mead* accordingly was in Possession of the said real and personal Estate, and the Plaintiff went beyond Sea.

Soon after his Departure *Mead* extended the said Household-Goods and Stock, and, without any Inventory, converted the Best of them to his own Use, and refused to sell the Crop and Corn, for which he was offered 900 *l.* or to let the Lands for 500 *l. per Annum*, and never paid the 50 *l.* to the Plaintiff's Wife, but by one *Davis* his Servant or Bailiff turned her out of Doors with only her wearing Apparel and 10 *l.* in Money for her Subsistence for eight Months; whereupon she went beyond Sea with her Children to her Husband the Plaintiff, and in September 1670, they all returned to *England*, and then the Plaintiff demanded an Account of the said *William Mead*, and the Possession of the Estate which was refused, unless the Plaintiff would allow such unreasonable Accounts as were then tendered to him, and to discover the aforesaid Matters and Things, and

to

to bring the Defendant to an Account the Plaintiff exhibited this Bill.

The Defendant *Mead* says, that he did not know the Value of the Plaintiff's *real Estate*, otherwise than by an Inquisition taken upon the *Extent on the Statute*, nor how much he was indebted, otherwise than by a Schedule of his Debts, which he had given to his Brother *Mead*, which amounted to 1800 *l.* besides the Debt of 335 *l.* due to the Defendant; that upon the Plaintiff's Request, he, this Defendant, undertook the Trust, but that it was upon his and *Matthew Mead*'s Promises to find out a fit Person to manage the Estate, for which the Plaintiff promised *Matthew Mead* 50 *l.* and it was agreed, that the Defendant's Debt of 335 *l.* should be first satisfy'd, and afterwards the Debts in the Schedule.

He says, that the *Statute* was given to secure his own Debt of 335 *l.* and 100 *l.* more, and denies any other Trust than to pay his own Debt, and with the Overplus to pay other Debts of the Plaintiff; and that there were twelve several Outlawries against the Plaintiff, and some after Judgment, and that the Stock and Goods were several Times seized, and the Defendant paid above 300 *l.* to discharge them; that he was never intrusted to sell the Corn, but had only Power to let the Lands to the best Advantage, and to sue for the Rents if there should be Occasion.

Confesses, that he did extend the Lands by *Levari facias*, and had, by Virtue thereof, both Lands and Goods delivered to him; and that *William Davis* had the Possession and Management of the Estate ever since the Year 1668, and received the Profits thereof, being appointed so to do by *Matthew Mead*, and that, on a just Account, there will remain due to the Defendant 926 *l.* and sets forth what Debts he had paid, and what Securities he had given, and what Money he hath spent at Law.

The Plaintiff's Counsel insisted, that *Mead* the Defendant had broke his Trust, having not paid any of the Debts in the *Schedule*, besides 100 *l.* to one *Catchpole*, and another 100 *l.* to one *Brereton*, and that all which he pretends to have paid, doth not amount to more than 600 *l.* whereas the Crop on the Ground was worth 900 *l.* and all the Disturbance and Executions which were upon the said Estate were occasioned by Nonpayment of the said 100 *l.* to *Catchpole* and *Brereton* in due Time as they ought, but that the Defendant kept the Estate in his Hands, and suffered Executions to come out to give some Colour to his unjust Dealings; and having gotten the personal Estate to the Value of 3000 *l.* into his Hands, and the Rents of the real Estate, he the said Defendant would now put the Plaintiff to have an Account from *Davis* the Defendant's Agent, against whom the Plaintiff cannot have any Demand, because he came to manage the Estate under the Defendant *Mead* only, and therefore tho' it may be proper for
Mead

Mead to call him to Account, yet the Plaintiff cannot, because the said *Davis* was never intrusted by him.

The Court directed an Account on Security to be given on both Sides, to answer and pay what shall be due to each other, and the Plaintiff is not to dismiss his Bill, and if it should abate, then he shall revive it, and the Account perfected; and upon giving this Security the Plaintiff shall have the Household-Goods delivered, or the Value thereof, and likewise the Possession of the Lands, and if any Collusion appear between *Mead* and *Davis*, then he shall be charged with what *Davis* hath received.

Scipio Lesquire *an Infant*, by Susan his Mother and Guardian, Plaintiff.

Elizabeth Lesquire, Widow, Defendant.

Dower decreed to issue out of the personal Estate, and if that was not sufficient to pay 100 *l.* per Annum, for Life, then to be supplied out of the real Estate. The Plaintiff allowed to amend his Bill, and to make the Executor a Party.

S *Scipio Lesquire*, the Plaintiff's Grandfather, did by his last Will devise to Sir *John Trevor* and others, his personal Estate, consisting in Leases, and other considerable personal Things; and this was in Trust, that the Defendant his Wife (and Grandmother of the Plaintiff) should have 100 *l.* per Annum, during her Life, out of the said personal Estate, which was to be in Lieu and Discharge of her Dower, and this she enjoyed for several Years, but lately brought several Writs of Dower against the Tenants of the Plaintiff, who have taken long Leases of his real Estate, and paid great Fines for such Leases.

The Court decreed, that the 100 *l.* per Annum should issue out of the personal Estate only, if that was sufficient, free from all Taxes, and that the Widow continue in the Possession of the Leases, which were Part of the personal Estate of the Testator towards Satisfaction thereof, and that an Account be taken of the personal Estate, and how much she hath received, and of what Sufficiency it is to satisfy this 100 *l.* per Annum, during her Life, and how it hath been disposed since the Testator's Death; and in Order thereunto the Plaintiff may amend his Bill, and make Sir *John Trevor* and the Trustees Parties, and if it appear, that the personal Estate is not sufficient, then the Dower must be made good out of the real Estate.

Robert

Robert Leigh, *Plaintiff*.

John Wood and John Leigh, *Defendants*.

THIS Bill was, to be relieved against several Actions of *Trespass* brought against the Plaintiff by the Defendants, for entering on a Piece of *Hop-ground*, which was let by the Plaintiff's Father to the Defendants, when (as the Bill suggests) his said Father was a *Lunatick* at that very Time he let this *Hop-ground*, and by Consequence was incapable to let it.

But the Court would not relieve the Plaintiff upon this Bill, because he had not made the Attorney General a Party, but ordered him to amend his Bill, if he thought fit.

Bill to avoid a Lease, for that the Lessor was a Lunatick, the Plaintiff ought to make the Attorney-General a Party. He had Leave to amend.

Humphrey Wild, *Esq*, *Plaintiff*.

Sir Edward Stradling, *Baronet*, *Defendant*.

L. C. J. Hollingham, Mss. Prolegomane of Equity
chap. 20. s. 21.

THE Case was, Sir Edward Stradling, the Defendant's Grandfather, being seised in Fee of a Parcel of Ground lying in the Parish of *St. Giles* in the Fields in the County of *Middlesex*, made a Lease thereof to Sir Robert Guilford for 500 Years, in Consideration of 400 *l.* paid by him to the said Sir Edward, which said Term for Years, or so much thereof as was unexpired, did afterwards, by several *Mesne Assignments*, come to, and was vested in the Plaintiff Humphrey Wild, who laid out above 1900 *l.* in building and improving the said Ground, by which Means he had advanced the Rents from 200 *l. per Annum*, which was the utmost Value (when the said Lease was granted) to 1400 *l. per Annum*, and the Plaintiff was never interrupted, but quietly enjoyed the same for 20 Years and upwards, till lately the Defendant brought an Action of Waste against him for pulling down a *Brick Wall*, and for cutting down Fruit-Trees, and for digging Gravel to lay the Foundations of several Houses built on the said Ground.

To be relieved against which Action the Plaintiff now exhibited this Bill, for that such Building could not be accounted any Waste, but rather a great Melioration and Improvement of the Land.

The Defendant, Sir Edward Stradling, did not deny the Lease, nor the Consideration-Money, nor Improvement; but having heard that it was only a Mortgage he had exhibited a

Bill

Bill to redeem, but the Defendant *Wild* (now Plaintiff) having by his Answer denied it to be a Mortgage, and affirmed it to be an absolute Lease for 500 Years, the Defendant Sir *Edward Stradling* was thereupon advised to bring his Action of Waste, and pleads the Statute by which Provision is made for bringing Actions of Waste.

The Court over-ruled the Plea, and ordered the Defendant to answer, and to speed the Cause.

Elizabeth Maplett *an Infant*, by Eleanor Hall *her Guardian*, Plaintiff.

John Pocock *and Anne his Wife*, and Robert Chapman, Defendants.

The Father devised a Legacy of 300 l. to one Daughter an Infant, and a Legacy of 300 l. to his youngest Daughter, and died, the Mother devised a Legacy of 200 l. to the youngest Daughter, and made her Executrix, the Defendant was Administrator during the Minority of the eldest Sister, who was sued by the Guardian of the youngest Sister for her Legacy; decreed, that their Legacies shall be paid in Proportion out of the personal Estate, and that the real Estate shall be equally divided.

DR. Maplett, a Physician, and Father of the Plaintiff, and of Anne the Defendant, did, by his last Will, devise 300 l. to the said Elizabeth, and soon after died; after whose Death Anne, his Widow, did likewise by her last Will devise 200 l. more to the said Elizabeth, and soon after she died, having by her said Will made Anne her Daughter, then an Infant, (and now the Wife of the Defendant Pocock) Executrix; Robert Chapman the Defendant took out Administration, *durante minore etate* of Anne the now Defendant, and possessed himself of the real and personal Estates of both Dr. Maplett and of Anne his said Wife, against whom the Plaintiff exhibited this Bill to have the said Legacies of 300 l. and 200 l. given to her by her said Father and Mother, and to have a Moiety of the real Estate of her said Father, as Coheir with her Sister Anne, and that in Order thereunto Chapman may bring the Writings into Court which relate to such Estate.

The Court decreed, that Chapman should account for the said personal Estate, and should pay the 500 l. Legacies to the Plaintiff, with Interest and Damages from the Time the said Legacies ought to be paid by the said Wills of her Father and Mother, in Case there are Assets; and if not, then to pay the same in Proportion with another Legacy of 400 l. devised to the Defendant Anne by her said Father, as far as the same will go; and that he bring the Writings into Court, that the Plaintiff may have Copies of them, and try her Title at Law; and upon Chapman's paying what shall appear to be due to the Plaintiff upon the Account, her Guardian shall give Security, that the Plaintiff when at Age, shall give a Release, &c. and it appearing, that Chapman was only a Trustee, and that there was no Breach of Trust, he shall have his Costs.

Edward Prescott, *Plaintiff.*

John Edwards, Thomas Broom, John Broom, Thomas Barrington, *and Mary his Wife, Defendants.*

M*ary Prescott* the Plaintiff's Mother being, about twenty-four Years last past, possessed of 160*l.* as *Guardian* to the Plaintiff, and which was his proper Money; she lent the said Money to the Father of the *Brooms* the now Defendants, who gave a Bond for the Repayment of the same with Interest; and afterwards by his Will he appointed his *Executor* to pay it (amongst other Debts) within a Year after his Death, and this to be out of his personal Estate, if that was sufficient; but if not, then to sell his real Estate, and pay it out of the Money arising by such Sale, and in Default of Payment, then the said Testator *Broom* devised both his real and personal Estate to certain Trustees (in the Will named) to the Use of the said *Mary Prescott* the Plaintiff's Mother, and to his other Daughters to pay the said 160*l.*

A Debtor by Bond devised it should be paid out of his personal Estate, and if that was not sufficient, then to sell his real Estate and pay it, which accordingly was sold, and by several Conveyances came to the Defendant, who was sued for the

Money as charged on the Lands which he bought; but it was decreed, that the Money which was received for the Sale of the Lands, shall go in Aid of this Purchase, which was for a valuable Consideration without any Notice, &c.

This Estate was conveyed and transferred from one to another, till at last it was sold to the Defendant *John Edwards*, against whom a Bill was brought to have this Debt.

The said *Edwards* insisted by his Counsel, that he had no Notice of the Plaintiff's Demand; and therefore that he (the Plaintiff) ought not to be satisfied out of the *real Estate*, but out of the personal Estate which came to the Hands of the Executor of *Broom* the Testator, who had sufficient *Assets* to satisfy the same; and that this Defendant had paid a full Consideration for the Purchase of the *real Estate*, and that if the personal Estate should not be sufficient, that then the Purchase-Money which was paid to *Thomas* and *John Brown* the Sons of the Testator, and some other Lands which came to *John* by the Death of his said Father the Testator, ought to be applied to satisfy the said Debt in Ease of the Lands purchased by the Defendants.

This was decreed accordingly.

T

John

John Lord Vaughan, *Plaintiff.*

David Morgan, *Esq;* Sir Humfrey Moneux, *Bart.*
and Sir John Finch, *Defendants.*

An Agree-
ment de-
creed to be
performed.

THE *Earl of Carbury* who was Father of the Plaintiff, in Consideration of 700*l.* which he borrowed of one *Maddison*, mortgaged the Lands (in the Bill) for 500 Years to *Francis Finch*, in Trust for the said *Maddison*, subject to be redeemed upon Payment of the said principal Sum and Interest, in which Mortgage the Plaintiff who was *Son and Heir of the Mortgagor* joined, and the Money not being paid, the Interest of the Premises was conveyed to *Robert and Wm. Tarway* in Trust for the said *Maddison*.

Afterwards in the Year 1661, the *Earl of Carbury* borrowed 1000*l.* of Sir *Humfrey Moneux*, (with Part whereof it was supposed the 700*l.* and Interest would be paid;) and thereupon *Finch's* Mortgage was assigned to Sir *Humfrey Moneux*, but the 700*l.* and Interest not being paid, Sir *Humfrey* assigned *Finch's* Mortgage to *David Morgan*, who brought an Action of Covenant against the now Plaintiff the *Lord Vaughan* on his Covenant, in the Mortgage for the Payment of the 700*l.* and Interest.

Whereupon it was agreed, that the Plaintiff should choose whether he would pay the 700*l.* and Interest, and have his Security assigned to the Defendant *Morgan*, or to pay Sir *Humf. Moneux* his Debt, and have that Security assigned to the said *Morgan*, and in either Case to pay 200*l.* down; and if he choose to pay *Finch's* Debt, then he was to secure the rest of the 700*l.* and Interest.

And he chose to pay *Finch's* Debt, and thereupon he gave a Warrant of Attorney to confess a Judgment for 2000*l.* which was deposited in Trust to be delivered to the Defendant *Morgan*, if the Money was not paid at the Time agreed on, and pursuant to this Agreement, the Plaintiff paid the Defendant *Morgan* 150*l.* and there was a Mortgage drawn for securing the rest of the 700*l.* and Interest; and when the Plaintiff was about to execute the same, the Defendant proposed to buy the Manor mentioned in the Bill, which Manor was agreed to be left out of the Mortgage-Deed, that the Plaintiff might sell it, and pay the Defendant out of the Money arising by such Sale.

But the Defendant *Morgan* insisting to have the said Manor inserted in the Mortgage-Deed, the Execution thereof was delayed; then the Defendant *Morgan* proposed to have another Judgment

ment defeasanced for Performance of Covenants, on purpose to incumber and hedge in the said Manor, that he might have it at his own Rate; but the Plaintiff refusing to give such *Judgment*, the Defendant *Morgan* took out Execution upon the *former Judgment*. And now the Plaintiff exhibited his Bill to be relieved against the same, and to have the Agreement performed, and that the Deed might be executed; all which Matter being confessed by the Defendant,

It was decreed, that the Agreement ought to be performed, and that the Plaintiff according to his own Choice ought to pay the 700 *l.* and Interest; and therefore an Account was directed to see how much Interest was paid, and included in the said 1000 *l.* borrowed of *Moneux* on the Assignment of *Finch's Mortgage* to him, and to make Allowances thereof to the Plaintiff, and to tax Costs for the Defendant.

William Weld, *Esq;* Son and Heir, and Executor of Sir John Weld, who was Executor of the Lady Frances Weld, by Bill of Revivor, Plaintiff.

Philadelphia Lady Wentworth and Widow, and Dowress of Thomas late Lord Wentworth; the Lady Henrietta Maria Baroness Wentworth of Nettledon, one of the Daughters and Heirs of the said Lord Wentworth, and Heiress of the Lord Cleaveland; John Robinson, *Knt. and Bart.* Sir William Palmer, Sir Richard Napier, and William Clerke Doctor in Divinity, Defendants.

THIS Cause came before the Court upon a Case stated thus. *This Cause was upon a private Act of Parliament, for the Payment of the Debts of the Ld. Cleaveland, by which a special and limited Trust was raised for that purpose.*
 ff. In July 1631, the Earl of Cleaveland borrowed 5000 *l.* of the Lady Weld, and for securing the Repayment thereof with Interest, he mortgaged certain Lands for sixty Years, and gave a Statute of 10000 *l.* which afterwards the Trustees at Drury House for Sale of Delinquents Estates required her to cancel; and thereupon they granted to her the Fee-simple and Inheritance of the Lands which were thus mortgaged to her as aforesaid.

Anno 12. Car. 2. an Act of Parliament was made, Entitled *An Act for settling some of the Manors, &c. of the Earl of Cleaveland in Trustees to be sold for the Payment of his Debts, and of the Debts of Thomas Lord Wentworth his Son*; and in the Schedule of Incumbrances mentioned in the said Act the *Lady's Weld Debt* of 5000 *l.* was mentioned in the second Place.

In *August Anno 1660*, the *Earl of Cleaveland*, and the *Lord Wentworth* stated the Debt with *Sir John Weld*, which was then agreed between them to be 9980 *l.* and the Father and Son made a Deed of Appointment, by which they directed, that the said Sum should be paid in the first Place, and then the Interest of the 5000 *l.* till the principal should be paid.

But the Mortgage-Lease would not satisfy the said principal Debt and Interest, because it would expire within sixteen Years, and therefore *Sir John Weld* insisted, that the Trustees might sell the Lands mentioned in the Act of Parliament; and that he might be paid, and having obtained a Decree, that the Account should be stated, and that what had been stated between them, being 9980 *l.* should stand, and that the Ladies *Philadelphia* and *Henrietta* should pay the same, together with the growing Interest of the said principal Sum of 5000 *l.* to be computed from the 16th Day of July 1660, and the Plaintiff's Costs, in Case they do redeem the Mortgage, discounting the Mesne Profits that *Sir John Weld* had received; and in Default of paying what should appear to be due to the Plaintiff upon the Account; then he should enjoy the mortgaged Premises, free from all Incumbrances.

Afterwards upon Application to the Court to have this decretal Order altered, and instead of being a Decree to foreclose, &c. (which the Bill did not seek) that it might be what the Bill desired, (*viz.*) that the Lands should be sold, and the Money applyed to satisfy the Plaintiff, and in case the Ladies should not procure a Purchaser by such a Time, then the Master might allow a Purchaser, and direct Conveyances for the Ladies the Defendants to execute.

But the Court would make no other Decree than aforesaid, because upon the Case stated, these Questions did arise.

1. Whether this *Act of Parliament* hath raised a general Trust for the Payment of the *Earl of Cleaveland's* Debts, or only a special or limited Trust.

2. What Operation the *Deed of Appointment*, directing the Payment of 9980 *l.* hath made in the Case.

3. What Remedy on the whole Matter the Plaintiff hath for his Debt.

Which Questions had been already resolved by the *Ld. Keeper* assisted by the *Lord Chief Justice North*, the *Lord Chief Ba-*

Baron Turner, and *Justica Rainsford*, who after a long Debate, and upon Consideration of the said Act of Parliament, were all of Opinion,

That by the said Act of Parliament there was a special and limited Trust, for the Payment of the Debts in *the Schedule thereunto annexed*, and *within the Time therein appointed*; and after the Payment of these Debts, then there was a general Trust for the Payment of any other of his Debts which he should appoint.

But that the general Trust could not take Place, till the special and limited Trust was fully executed, and that the general Trust was not subsisting of it self, but depended on the limited Trust; and that no Estate or Interest did, or could vest in the Trustees until the Mortgages and other real Incumbrances mentioned in the said *Schedule*, were stated and paid, or otherwise discharged; and it would have been unjust if it should, for then the Estates and Interest would have been taken out of the Mortgagees, and other Creditors Hands, who had real Securities for their Debts before the same were paid, which was never intended by the Act, but quite contrary; for tho' it was made upon the Petition, and in Favour of the *Earl of Cleaveland*, and not to better the Securities of the Creditors; yet it was never intended to take them away without full Satisfaction.

And the special and limited Trust being at an End, by *Effluxion of the Times mentioned in the said Act*, and not all executed, no Court can proceed upon that special Trust, or cause any Execution thereof, so that the special Trust being determined, the general Trust must be so likewise; for it cannot subsist without the other; and tho' it was within the Intention of the Act, to make good all the Securities the Plaintiff ever had for his Debt, yet his Demand being made *out of Time* this Court cannot relieve him, nor can the *Deed of Appointment* have any Operation upon any of the Trusts, because those Trusts were ceased and determined as aforesaid; nor hath the Plaintiff any farther Relief or Remedy for his Debt, other than what is already given him by the said Decree.

John Warren *and* Richard Warren, *Plaintiffs*.

Thomas Green, William Hurtnall, Nicholas Tilly,
and Thomas Horne, *Defendants*.

THE Case was, *ff. Mary Warren* the Plaintiff's Mother, being possessed of the Residue of a Term for 99 Years, of An Award set aside, being made of Things to which the Parties never submitted.
and

and in certain Houses and Grounds in *Bristol*, settled the same on *Hurtnall* and others, in Trust for her self; and afterwards to the Use of the Plaintiff *John Warren* her Son, and afterwards she married with the Defendant *Thomas Green*, and then the said *Hurtnall* contrary to his said Trust, delivered up the said settlement, and the original Lease to the aforesaid *Thomas Green*.

The said *Mary*, Mother of the Plaintiff, and now the Wife of the Defendant *Green*, being likewise seised in Fee of a *Moiety* of other Lands, died so seised, after whose Death her Husband the said *Thomas Green* enjoyed the Lands and Houses; and there being some Differences between him and *John* the now Plaintiff, who was Son and Heir of the said *Mary*, concerning the Sum of 8*l.* and other small Matters, the same were submitted to the *Arbitration* of the Defendant *Hurtnall*, and to that Purpose both Parties entered into Bonds; and afterwards *Hurtnall* the Arbitrator taking Advantage of the Weakness and Unskilfulness of *John*, awarded that all Suits between him and *Green* his Father in Law should cease; and that before the End of *Trinity-Term* following, *John Warren* (the Plaintiff) should sufficiently convey and assure to the said *Green*, his Heirs and Assigns, all his (the said *Warren's*) Right and Title to the said *Moiety* of the said Lands, and should procure his Wife to join with him in a *Fine* before the End of the said Term, in order to perfect the said Conveyance, and should within a Month sufficiently grant, convey, surrender and assign to him the said *Green*, all his (the said *Warren's*) Right to the Houses in *Bristol*, and until such Conveyance that *Green* should continue in Possession, and should pay to the Plaintiff *Warren* some small Sums amounting to 200*l.* whereas the Premises were worth more than 1000*l.* and that each Party should seal mutual Releases.

Now tho' there was nothing but small Sums referred to *Arbitration*, yet there was no Notice taken of them in the Award, but only of * all the *Houses and Lands* which were never intended to be submitted to the Award, and to which *Green* had no manner of Title.

* By the Civil Law, the Arbitrators can judge nothing but

what is submitted to their Judgment, by the Compromise, and if they do not observe the Conditions therein prescribed, but judge otherwise, their Award is void. *Dom. 1. Vol. 226.*

Therefore the Plaintiff exhibited this Bill to have a Reconveyance of the Premises in *Bristol*, and an Account of the Profits since the Death of *Mary* his Mother, and to set aside the said Award.

The Defendant *Green* pretended that the said *Mary* had actually revoked the said Deed of Trust, and had made another Settlement thereof in Consideration of 300*l.* which was paid for the

Plain-

Plaintiffs by the said *Green*; and that this subsequent Settlement was made upon *Tilly* and *Horne*, in Trust for the Defendant *Green*; whereas in Truth this Settlement was made but two Days before the Death of *Mary*, and the Deed was never sealed by her, but by *Green* and *Hurtball*, who pretend that *Mary* had reserved an implicate Power to revoke the first Settlement; and it did not appear that the *Award* had been executed in any Part.

Thereupon the Court decreed, that *Hurtball*, *Tilly* and *Horne* should convey the Premises in *Bristol*, by undivided Moieties, (*viz.*) one Moiety thereof to *John Warren*, (the Plaintiff) his Executors and Administrators, and the other Moiety likewise to him, but in Trust for his Brother *Richard*, (the other Plaintiff) his Executors and Administrators, to be by them enjoyed against the Defendants, and all claiming under them; and to account for the Profits, and to pay one Moiety to *John*, and another for *Richard*, and Costs.

And that the Bonds of Arbitration might be brought before the Master and cancelled, and that the Defendants deliver up the original Lease for 99 Years, and all other Writings concerning the Premises in *Bristol*, and *Green* to answer upon *Interrogatories*.

Robert Osborn, Clerk, and Dame Elizabeth Brandling his Wife, and William Pitt, Esq; Son and Heir, and Executor of William Pitt, and Baldwin Pitt, Gent. Plaintiffs.

Sufannah Brownwell and others, Defendants.

THIS Bill was brought by a *Jointress*, to discover Incumbrances on the Lands settled on her in Jointure which was greatly deficient.

The Defendant pleads, that she is a Purchaser for a valuable Consideration, having paid so much Money to the Husband, and that she had brought an Action, and obtained a *Verdict* and *Judgment* for 1000*l.* which was affirmed on a Writ of *Error*, Plea of Purchase for a valuable Consideration, &c.

But the Question being, whether any more than the principal Sum of 1000*l.* was secured on the Lands which the Plaintiff claimed for her Jointure, and what is now to the Defendant for principal and Interest, the Court ordered her to answer that Particularly.

George

George Unwin, *Clerk, Plaintiff.*

George Fawnt, *Esq; Defendant.*

Agreement
about an En-
closure de-
creed.

See ant. 100.

THIS Bill was brought by the *Parson* and *Rector* of the Church of *S.* to have an Execution of an Agreement, setting forth that the Lands therein mentioned, did formerly belong to his *Church*, and that the *Buttalls* and *Boundaries* thereof cannot now be known, because of certain Inclosures, by which several Parcels of Land were held from the Church, in Recompence whereof it was *agreed* between the Predecessors of the Plaintiff, and the Ancestors of the Defendant, that other Lands in the said Bill likewise mentioned, should be enjoyed by the Parsons of that Parish, for the Time being successively, and which the Defendant endeavoured to avoid by a pretended subsequent Agreement with a former Rector, by which the Plaintiff affirms, that the Church would be damaged by withholding Part of the Glebe and Tithes; the Defendant insisted on an Award made between *Ashford* a former *Rector* of that Church, and one of the Ancestors of the Defendant, which was afterwards confirmed by a Decree of this Court, and that the Defendant had fully complied with, and performed that Decree there being no Footsteps to be found of the Agreement on the first Enclosure, however, that the last Agreement ought to take Place, and include the first.

The Court was of Opinion upon the Proofs and Answers in this and former Causes, that the first Agreement on the Enclosure was good, and that the Plaintiff ought to have the Benefit thereof; and decreed that a Commission should issue to certain Persons of the County to be settled by the *Six Clerk*, if the Parties cannot agree, who according to the first Agreement upon the first Enclosure were to enquire and set out Lands pursuant to that Agreement, which being pursued according to the particular Directions of the Decree, the said Enclosure and Directions shall be confirmed; and that the Defendant shall pay to the Plaintiff the Arrears of Tithes due amounting to 70*l.* and shall give to the Plaintiff Copies of the Evidences he hath concerning the Premises.

John Shipton and Lucy his Wife, Plaintiffs.

Robert Hampson and others, Defendants.

THE Case, ff. *Sir Edward Tyrrell*, Grandfather of the Plaintiff *Lucy*, did by Deed dated, 12 May 1657, (among other Things) charge the Manors and Lands in the Bill mentioned for the Payment of 2000*l.* to the Plaintiff *Lucy* his Grandaughter.

Devise of a Portion the Legatee marrying with the Consent of the Executors, &c. she

married without their Consent, but the Portion was decreed to her with Interest; and it being to be paid out of the personal Estate of her Father, the Court would not allow that her Mother should retain her *Paraphernalia*.

Afterwards upon the Marriage of *Sir Thomas Tyrrell*, (Son and Heir of *Sir Toby Tyrrell*) with *Frances* the Daughter of *Sir Henry Blunt*, the said *Sir Toby* sent for the Plaintiff *Lucy*, and told her that her Portion of 2000*l.* would be paid out of the Portion of 4000*l.* which *Sir Henry Blunt* was to give in Marriage with his said Daughter *Frances*; and desired the said Plaintiff *Lucy* to give a *Release* (such as *Sir Henry Blunt* or his Counsel would advise) to discharge the Lands out of which the said 2000*l.* was payable; and that she would intrust him the said *Sir Toby* to receive the said 2000*l.* for her; which he would take and improve, and pay to her, who in Obedience to the said *Sir Toby* (her Father) consented that he should receive the Money; and she executed a *Release* according to his desire.

Afterwards *Sir Toby* by his Will appointed, that his personal Estate, (except what was particularly devised to others) should be to the Use of his Daughter *Lucy* for her Portion and Maintenance, and that she should have the Interest thereof during the Time she continued sole and unmarried; but in case she should marry without the Consent of his Executors, or the major Part of them, then she should only have the present Interest of her Portion during her Life, for her Maintenance; and that if she should die unmarried, then her Portion and the Interest thereof should go to *Timothy Tyrrell* the youngest Son of *Sir Toby*, who made the Defendants *Sir Robert Cotton*, *Robert Hampson*, and *Gregory Symonds*, Executors in Trust to perform his Will, and soon after died possessed of a personal Estate, to the Value of 6000*l.* and upwards and the Executors proved the Will.

Afterwards the Plaintiff *Lucy* married the said *John Shipton*, without the Consent of the Executors, and now the Husband and Wife exhibited their Bill, to have this Trust performed for the Payment of the said 2000*l.* and the Residuary Part of her Father's

ther's personal Estate, (except what was particularly devised to others) according to the Direction of her Father's Will.

The Executors insisted, that *Lucy married without their Consent*, and that they were ready to account, if she would account to them, for what she had received, which they now prayed by a cross Bill against her Husband and *Dame Lucy*, the Widow of Sir *Toby*, who was one of the Defendants, and who insisted to retain the *Jewels* as her *Paraphernalia*.

The Court was of Opinion, that the 2000*l.* was a just Demand both in Law and Equity, and ought to be paid with Damages out of the personal Estate of her Father, as far as the same will extend, and decreed the same accordingly; and that the Defendants, the Executors, account for the said personal Estate which came to their Hands respectively, (having all just Allowances) and that *Dame Lucy* shall upon Oath account for all the *Jewels*, *Medals*, *Pictures*, *Seals*, *Cabinets*, *Gold* and *Silver*, and other Things of Value which came to her Hands or Possession, during the Time of her Intermarriage with the Plaintiff's Father, and what Money hath been received by the Plaintiff *Lucy*, or her Husband, shall be brought into the Account, and discounted by the Plaintiffs; and that the Master shall certify what remains due from the Defendants, the same to be secured for the Benefit of the Plaintiff *Lucy*, and such Children as she shall have; and * the Plaintiff *Shipton* her Husband not to meddle with it, or have any Power to dispose thereof without first making a suitable Provision for the said *Lucy* and her Children; and the Master to see such Provision is made and settled; and in the mean Time the Interest of the Money so to be secured as aforesaid, shall be received by the Plaintiffs, for the present Support and Maintenance of the said *Lucy* and her Children.

* The Husband decreed not to intermeddle with the Portion of his Wife, till he had made a suitable Settlement on her and her Children.

Sir Philip Parker and Henry Parker, *Esq;* Executor of the Lady Mary Salstonstall, Widow; by Bill of Revivor, Plaintiffs.

Jane Serjeant, Widow and Executrix of Richard Serjeant, William Serjeant, Senior, and William Serjeant Junior, Defendants.

Proposals in Writing being sent to the Friends of the Woman, relating to an intended Marriage, tho' no Answer was returned; yet the Man being admitted to be a Suitor, and the Marriage ensuing, this in Equity was decreed to be an Agreement executed on all Sides.

William Serjeant the elder, being Nephew to Richard Serjeant, he the said Richard Serjeant, upon a Treaty of Marriage between his said Nephew and one Anne Tuckey, made Proposals in Writing to her Father, by which the said Richard

Serjeant, did promise and agree, that if the said Marriage did take Effect, and that if 2500*l.* was paid or secured to be paid for her Portion, he would settle 200*l.* per Ann. out of his Tithes and Lands in *Dinton* and *Upton*, &c. for a present Maintenance for the said *William* and *Anne*, and for her Jointure, if she survived; and that he would settle an Estate in Fee of all other his Messuages and Lands, (in the Bill mentioned) the whole being of the yearly Value of 700*l.* and that he would likewise assign over and settle 2000*l.* Part of the said 2500*l.* to his said Nephew, for his further Maintenance, after the Death of the said *Richard Serjeant* the Uncle.

This Marriage did not take Effect, but afterwards there was another Treaty of a Marriage to be had between the said *William Serjeant*, the Nephew, and one *Jane Saltonstall*, with which the said *Richard* the Uncle being acquainted, he to induce the said Marriage, did send the Proposals in Writing, which he formerly made to *Tuckey*, to be communicated to the Plaintiffs *Sir Philip Parker*, &c. and by another Writing under his Hand, which he sent with the said Proposals he promised and agreed, that if the Marriage did take Effect, he would settle the said Estate on his Nephew *William* and *Jane*, according to the former Proposals on his Treaty with *Tuckey*, with this farther Addition, that tho' formerly he did demand 1500*l.* to be paid down, and Security for the remaining 1000*l.* he would now be contented to stay for the whole, so as it might be secured to be paid in some convenient Time to be agreed on.

No Answer was returned to these Proposals, but the Nephew was admitted, and the Marriage took Effect, and afterwards *Richard* the Uncle died; and now the said *Wm. Serjeant* having exhibited a Bill against *Jane* his Aunt, who was the Widow and Executrix of his Uncle *Richard Serjeant*, by which he claimed 2000*l.* over and above 700*l.* per Ann. and insisted that the Lands which were to be settled on him according to the said Agreement and Proposals were not of the Value of 700*l.* per Ann. but far short thereof, which he would have to be supplied out of the Estate of his said Uncle.

And the Question upon the whole Matter being, whether the Lands proposed by the said *Richard* to be settled on his Nephew, were deficient of the Value of 700*l.* and if they were, who and from whence that Defect should be supplied, and how much of the Marriage-Portion was intended by the said Agreement for the Benefit of the Nephew, after the Death of his Uncle.

Both which being doubtful upon reading the Proofs, the *L. Keeper* declared, that when the Uncle sent Proposals, and desired to have his Nephew admitted a Suitor to *Jane Saltonstall*, tho' no Answer was returned to the Uncle; yet the Acceptance of the Proposals by her Friends, and the Admission of the Nephew to be her Suitor, upon which the Marriage did ensue, this in Equity did a-

mount to an Agreement executed, and ought to be performed on all Sides.

The Uncle settled a Jointure on his Wife, but with a Power of Revocation; afterwards upon the Marriage of his Nephew, he agreed to settle 700 *l. per Ann.* on him, but the Lands being short of that Value, shall not be supplied out of the Jointure; for tho' that was *fraudulent* as to Purchasers, being made with a Power of Revocation, it was not so to the Nephew, or his Wife, because made long before their Marriage.

But the Defendant *Jane*, the Aunt, insisting by her Counsel, that the Lands settled on her, ought not to be impeached, the same being not so much as mentioned in the particular, or the Proposals aforesaid, or demanded by the Bill it self.

And the Court having directed this Issue to be tried.

(1.) Whether the Lands in the Particular proposed were at that Time, or within 7 Years before, of the Value of 700 *l. per Ann.* which not being tried,

And the Cause coming now to be reheard by the *Ld. Keeper*, (assisted with *Justice Ellis*) he declared that the Sum intended to be settled on the Nephew was 2000 *l.* over and above the 700 *l. per Ann.* but that the Lands settled on his Aunt by the said *Richard* his Uncle should not be impeached, the said Settlement being made long before the Treaty and Proposals, upon which the Marriage with *Jane Sultonstall* did take Effect.

And tho' the said Settlement was voluntary, and made with a Power of Revocation, which by the very Letter of the Statute 27 *Eliz.* would make it fraudulent against any Purchaser; yet it could not be so against the Nephew, or his Wife, for it could not be made with an Intent to deceive her; because it was made so long before her Marriage, and the Lands which were thus in Jointure to the Aunt were no Part of the Particular, whereon the said Marriage was made between the Nephew and her, which Marriage was had without one Penny of Portion paid or secured.

Therefore the Nephew and his Wife cannot be accounted such Purchasers, so as to avoid the Settlement made on the Aunt as fraudulent, because there was a Power of Revocation in it; for it would be unreasonable to subject an Estate settled long before (as this was in Jointure to the Aunt) to make good the Values of a Particular wherein that Estate was not so much as mentioned, and the rather because the Marriage of the Nephew (in this Case) was had without the Knowledge of the Uncle, tho' he approved of it after it was had, and the married Couple having hastened the Marriage, and made it impossible for Precedent Settlements to be made with such Covenants as might be agreeable to the Intention of both Families; it would be very hard for this Court by a strained Exposition

sition to subject the *Aunt's Estate and Jointure* to this Agreement, which was never under Debate during all the Treaty.

Thereupon the *Ld. Keeper* decreed the *Aunt* to execute Conveyances according to the Proposals, (excepting her own Jointure) and that she pay to the Nephew *Wm. Serjeant* 2000*l.* Part of 2500*l.* now in her Hands, and that the 500*l.* Residue, and the Interest thereof, and of the whole 2500*l.* from the Time the same should have been paid, be liable to the Demands of *William the Nephew*; and to supply the Defect of the Value of the Lands, for which the Court would not direct a Trial at Law, because there appeared no other way to supply such Defect.

Dr. Mapletoft and several others, Plaintiffs.

Elizabeth Countess Dowager of Northumberland, the Lady Elizabeth Piercy an Infant by the said Countess her Guardian, Thomas Earl of Essex, William Pierpoint, Orlando Gee, and others, Defendants.

THE Plaintiffs being all of them *Servants of Algernoon and Jocelin, late Earls of Northumberland*, who, for their long and faithful Services to the Family, had Pensions, (particularly mentioned in the Bill) allowed them for their Lives, and constantly paid to them by the Defendant *Gee the Steward*, which Pensions had been discontinued to be paid since the Death of *Jocelin the last Earl*; and because the *Countess Dowager*, and the *Steward* could find no Writing or Will for those Pensions, they thought themselves not secure against any Account the *Lady Elizabeth* might demand for the Payment thereof, unless they the Countess her Executors and Administrators, and the said *Gee*, his Heirs, Executors and Administrators were indemnified and protected by a Decree of this Court against the said *Lady Elizabeth*, her Heirs, Executors and Administrators; therefore they exhibited a Bill for this Purpose, and the same was decreed accordingly.

Pensions paid to Servants, but without any Will or Writing, decreed to be paid as formerly, after some Discontinuance.

Daniel Norton, James Heydon and others, Plaintiffs.

John Serle, Tho. Cheevly, Jos. Rookby, Thomas Bernard and others, Defendants.

THIS Bill was, to have an Execution of an Agreement about the Freight of a Ship, the Plaintiffs together with the Defendant *Tho. Bernard* being Part-owners thereof, and which they left to the Defendants by *Charterparty* at 80*l.* per Month; for 8 Months performed,

An Agreement about the Freight of a Ship decreed to be performed,

eer-

certain, commencing from *Octob.* 1669, and for so many Months afterwards, not exceeding *six* Months.

And the Plaintiff covenanted, that the Ship at her Departure from *Gravesend* should be *strong, substantial, well victualled, tackled and apparelled*, and furnished with all manner of Necessaries for a Voyage; and the Defendants covenanted to pay 80*l.* *per Month* for so many Months as the Ship should be in their Service, and until her Return to *London*; but if she should be *lost, taken, cast away, or otherwise miscarry* before the Delivery of her Lading in *Raphahanock River* in *Virginia*, then the Defendants were not to pay any Freight.

The Ship accordingly departed from *Gravesend*, and some Time afterwards put in at *Barbadoes*, where *Rookby* one of the Freighters, who was likewise a Part-owner, unladed her; and she having been above *ten Months* in the Defendants Service, and *worth above 600 l.* the said *Rookby* fraudulently caused her to be condemned there; and afterwards he himself bought her for 185*l.* and now the Defendants refuse to pay the Freight according to their Agreement, tho' a Verdict had been obtained by the Plaintiffs, pursuant to the Direction of this Court for a Trial at Law upon this Issue; whether the said Ship was *strong, substantial, and well victualled, &c.* according to the true Meaning of the said Charter-party.

The Court decreed the Defendants to account and pay 80*l.* *per Month* due for Freight, from her Departure at *Gravesend*, till her Arrival at *Barbadoes*, deducting the Shares of those who sold her; but for the *Value of the Ship*, the Plaintiffs could not be relieved in this Court, but at Law.

Francis Rhodes, *Bart.* and Dame Martha his Wife,
Plaintiffs.

William Thorneton, *Gent.* an Infant, by Ciprian Thorneton his Guardian, and John Thorneton and the said Ciprian Thorneton, *Gent.* Defendants

Articles on Marriage, decreed to be performed by the Trustees, and they indemnified.

UPON the Marriage of *Sir Francis Rhodes* (the Plaintiff,) with *Martha*, the Daughter of *Wm. Thorneton*, Articles were made, sealed and executed, by and between *Sir Gervas Clifton* the Plaintiff's Grandfather, and the *Lady Rhodes* his Mother, on the one Part, and the said *Wm. Thorneton*, of the other Part; whereby it was agreed that the Plaintiff (who was then but 16 Years old) should within 3 Months after his Age of 21 Years, settle on his Wife, Lands of 500*l.* *per Ann.* in lieu of her Dowry for her Life, and the Reversion thereof; and of all other his Lands on himself for Life, Remainder to the Issue Male of that Marriage, Remainder over. I In

In Consideration whereof the said *William Thorneton* agreed to pay as the Portion of his said Daughter, 3500*l.* within one Month after such Settlement made in manner following, (*viz.*) 1000*l.* Part thereof to the *Lady Rhodes* the Mother, for the Use of *Jane Rhodes*, the Plaintiff's Sister, for whom no Provision was yet made; and the other 2500*l.* was to be laid out in a Purchase of Lands as the said *Lady Rhodes*, and *Sir Gervas Clifton*, or the Survivor of them should direct and appoint; and for want of such Appointment, then to the Plaintiff and his Heirs.

The *Lady Rhodes* being the surviving Trustee, appointed the 2500*l.* to be laid out in Lands to be settled on the Plaintiff and his Heirs, and 100*l.* *per Ann.* to be paid to him in the mean Time till his full Age, and a Jointure made pursuant to the said Articles.

The Plaintiff was now of Age, and the Trustees refuse to accept any Settlement, or to lay out the said 2500*l.* according to the Articles, and the Appointment of the *Lady Rhodes*; and thereupon a Bill was exhibited to enforce the Performance of the said Marriage-Articles and a Decree was made, that the same should be performed.

And now the Cause coming before the Court upon a Bill of Review, to reverse the said Decree, because it was impracticable, and not to be performed; for the Debts and Securities of *Sir Fran. Rhodes*, the Plaintiff's Father, and of his Grandfather, (wherein they bound *their Heirs*, and whose Heir the Plaintiff is) have been put in Suit, and his Lands extended; and the Plaintiff hath been forced to take up great Sums at Interest, to discharge Part of the said Debts, so that he cannot settle his Estate clear of all Incumbrances; and that the same, and paying so much Interest-Money will in a short Time consume his Estate; and this is chiefly occasioned by the Non-payment of the said Portion, so that if the Decree should stand, he might be ruined.

And his real Estate being about 900*l.* *per Annum*, he offered by his Counsel, in case he should be enabled to sell Part thereof, to discharge the Debts of his Father and Grandfather, then he will settle Lands (in the Bill mentioned) of 500*l.* *per Annum* on himself for Life, without Impeachment of Waste; and after his Decease, then to his Wife for Life, for her Jointure, (who is contented to accept thereof,) Remainder to the Issue Male of the said Marriage according to the Articles.

And this being agreed unto by the Trustees, it was decreed accordingly, and the former Decree reversed; and that the Plaintiff make such Settlement, and after 'tis executed, that then the Trustees pay him 2500*l.* out of the Trust-Estate of *Thorneton*, and pay 70*l.* *per Annum*, in lieu of Interest, till the said Sum shall be raised and paid, and this by half yearly Payments; and

and the Trustees to account for the Rents received by them, and to have all just Allowances, and *Costs* of Suit, and to be protected, &c.

John Petteward, *Gent. Plaintiff.*

Mary Petteward, *Widow and Executrix of Roger Petteward, Defendant.*

A Legacy of 2000 *l.* was devised to the Plaintiff, which was to be made up of Debts due to the Testator, and mention'd in a Schedule annexed to his Will; but those Debts came to 1700 *l.* and no more; yet Assets being confessed, the 2000 *l.* was decreed.

THE Case was, *ff.* a Legacy of 2000 *l.* was devised to the Plaintiff by the last Will of his Father, which was to be made up of particular Debts due to the Testator, enumerated in a Schedule, and annexed to his said Will; and a Bill was formerly brought by the Plaintiff against *Roger Petteward*, the Executor of his said Father's Will, who being now dead, the Suit was revived against *Mary Petteward* his Widow and Executrix, to have this Legacy of 2000 *l.* which was refused to be paid; because there was a Mistake in the Writer of the Will of the Sums and Debts out of which this Legacy was to arise; for those upon Computation amounted to no more than 1700 *l.* which the Defendant was willing to pay, but would not pay more.

Upon reading the Will of the Grandfather, who first directed such a Sum as 2000 *l.* to be left by the Father to his Son, (the now Plaintiff) and the Father having a great personal Estate from the Grandfather, and also upon reading his Will and other Proofs, it appeared that 2000 *l.* was the Sum given, and *Assets* being confessed,

The 2000 *l.* was decreed to be paid, and the Master to take an Account; and all Writings belonging to the Plaintiff to be delivered up to him upon Oath.

John Letton, *Plaintiff.*

Daniel Penfax *and others, Defendants.*

Plea of Purchase for a valuable Consideration without Notice, &c. the Plaintiff replied, and

THIS Bill was, to discover what Title the Defendants had to a Ship *in question* from one *James Streater*, in which the Plaintiff had an *8th Part* by a Bill of Sale from the said *Streater*, dated in *May 1671*, and that if the Defendants had any Title, it was subsequent to that of the Plaintiff.

the Defendant was ordered to answer.

The Defendants plead a Bill of Sale from *Streater, &c.* for a full and valuable Consideration, without Notice of the Plaintiff's Title; the Plaintiff replied, that the Defendant might be a Purchaser, and yet it might be of some Mortgage, or upon some Trust or Agreement.

And the Court ordered him to answer, whether on any Mortgage, Trust or Agreement.

Broom Whorewood, *Esq;* Plaintiff.

Jane Whorewood *and* Jarvis Hide, *Dr. in Physick,*
Defendants.

THE Defendant *Jane* having obtained a Decree for 300 *l.* *per Annum Alimony*, to be paid to her by the Plaintiff her Husband *during their Separation*; and the said Decree being confirmed upon a Bill of *Review*, and likewise upon an *Appeal* to the House of Lords, the Plaintiff now exhibited his Bill to set aside the same, offering to be reconciled, and to cohabit with his said Wife.

An original Bill to set aside a Decree for Alimony confirmed upon an Appeal in the House of Peers, the Husband was proper.

offering to be reconciled; adjudged, that this Bill

But this being an original Bill to set aside a Decree so solemnly confirmed, the *Lord Keeper* desired the Assistance of some Judges, who, upon great Deliberation, did all agree, that this Bill was proper for Relief; for otherwise a Separation between Man and Wife would be established in a Court of Equity, which was a Thing contrary to Justice and Equity, and therefore decreed, that (notwithstanding the Danger which the Wife pretended) if she should cohabit with her Husband, yet that there should be a Stop put to the Payment of this *Alimony*, if she did not return to her Husband within such a Time, especially since the Decree was only for a Provision for her during their Separation; and the Ecclesiastical Court giving *Alimony* in no Case, but where there is an absolute and real Separation, or for Expenses of Suit.

Therefore if the Husband hath a sincere Intention to be reconciled to his Wife, and to cohabit and maintain her according to his Quality and Estate, 'tis certainly unjust not to encourage such Reconciliation, and not to remove all Obstructions that might hinder it; but still that the Arrears of what ought to have been paid during the Separation, should be first paid and brought into this Court (which appeared to be 1196 *l.*) in Order to pay her

Debts in the first Place, and the Surplus to her; and if the Whole is not sufficient to pay her Debts, then her Creditors must abate in Proportion.

And upon the Plaintiff's bringing that Sum of Money into Court, the Sequestration his Wife obtained on his Lands, for the said 300 *l. per Annum*, shall be discharged, and the farther Payment thereof shall cease from that Time, and all farther Executions of the said Decree, or Proceedings thereunto, shall be suspended.

And the Lord Keeper declared, that if she cohabited with her Husband, yet the said Decree should not be quite vacated, but that she should remain under the Protection thereof, and should be at Liberty, by Order of this Court, to resort to it, if the Court should be satisfy'd she was in any real Danger from her Husband, or if he used her ill; and that in such Case the Decree should be as effectual, and as much in Force for her Benefit, as if it had never been suspended.

John Meadows *and others, Plaintiffs.*

Edward Patherick, *Esq; Defendant.*

Decree between the Lord of a Manor and his Tenants, to ascertain Boundaries, and to reduce Fines to a Certainty confirmed.

THIS Bill was, to establish and confirm a former Decree, and an Award, by which the Commons and Inclosures between the Lord of the Manor and his Tenants of the Manor, and Lands in the Bill mentioned, were *bounded and ascertained*, and the arbitrary Fines taken of the Copyholders were reduced to a Certainty, and enjoyed and paid accordingly, ever since the said Decree, until the Defendant, who had now purchased the Manor, insisted on several arbitrary *Fines* again to be paid by the Copholders, and had entered upon the Commons, which had been formerly decreed for them.

Which Decree was confirmed accordingly.

Thomas

Thomas Nourse, William Yate *Senior*, and Mary
his Wife, Nourse Yate, Charles Yate, William
Yate, *Plaintiffs*.

Christopher Yarworth, *Defendant*.

J. l. M. H. M. J. Jan 17.
J. C. 2. M. d. O.

THIS Cause came before the Court upon a Case stated,
which was thus;
in the Inheritance, but subsisting in Equity:

The Trust
of a Term
for Years
not merged

ff. Richard Yarworth the Elder, formerly the Husband of the
Plaintiff *Mary Yate*, and Uncle to the Defendant *Christopher*
Yarworth being seised in Fee of certain Lands in *Leicestershire*;
and of other Lands in *Glocestershire* in the Bill mentioned, did,
on his Marriage with the said *Mary*, settle his *Gloucestershire*
Lands, in Consideration of the said Marriage, and of a Portion,
&c. to the Use of himself for Life, Remainder to the said *Ma-*
ry for her Life for her Jointure, Remainder in Special Tail, Re-
mainder to his own right Heirs.

And by *Indenture dated 1 March 1649*, and made between
him the said *Richard Yarworth* and the Defendant *Christopher*
Yarworth, for the better Payment of his Debts and Legacies,
and for settling and establishing, &c. the said Lands, he did de-
mise all his said Lands in both Counties to the Defendant *Chri-*
stopher Yarworth to hold the same for * 99 Years after the
Death of the said *Richard*, under the yearly Rent of 6 l. upon
Trust, that the said *Christopher*, his Executors, &c. should con-
vey and dispose the said Lands, and the Profits thereof, to such
Person as the said *Richard* should by his last Will direct.

* The chief
Question did
arise upon
the Trust of
this Term.

Afterwards, (*viz.*) 9 March 1664, *Richard* by his Will
(then dated) did devise, that within one Year after his Death,
Part of his *Leicestershire* Lands (therein named should be sold
by the Advice of his Overseers for 20 Years; and that with the
Money arising by such Sale, and with the Rents and Profits in
the mean Time to pay his Debts and Legacies, and to distribute the
Overplus amongst his Kindred, (in the Will named) and in such
Manner as therein directed.

Then he devised, that the Lands so ordered to be sold, shall
from and immediately after the Expiration of the said 20 Years,
be and remain to the Use of the Heirs of his Body on the Body
of the said *Mary* to be begotten, and for Default thereof to his
Executor and his Heirs.

And all other his *Leicestershire* Lands, to the Use of the
 * His said * *Heirs of his Body on the Body of the said Mary to be be-*
 Wife *Mary* gotten, and for Default thereof, to the Use of *A. B. C.* his Kin-
 was then big dred, as should be then living, for and during the like Term of
 with a Son, 20 Years, to be disposed in such Proportions, and to such Uses
 who was af- as his other Lands in *Leicestershire*, were first limited and ap-
 afterwards pointed; but that the said *Christopher* should in the first Place
 born, but his have 50 *l.* out of them, and after the said 20 Years, then to
 Father was * *Christopher and his Heirs.*
 then dead, yet this was
 adjudged an Estate Tail
 in the after-born Son.

* Here the Term of 99 Years, and the Fee-simple, met in *Christopher*, and so was merged in Law; yet the Trust of that Term shall still be settled in Equity.

And if he (the Testator) should have *no Issue living at the Time of his Death*, then he devised Part of his *Gloucestershire* Lands to the said *Christopher* and his Heirs, immediately after the Death of the said *Mary*; and also he devised to *Christopher* and his Heirs, all other his *Gloucestershire* Lands, both Freehold and Copyhold, called *L.* in the said County of *Gloucester*, immediately after his (the Testator's) Death, and devised to the *Heirs of his Body on the Body of the said Mary to be begotten*, that Acre called the *Half-penny Acre*, then he devised six Acres of *Wood-ground* in *Cann* in the County of *Gloucester* for three Lives; and for Default of such Issue, to *Christopher*, whom he made sole Executor, and on 24 March 1649, died.

About a Month after his Death the Plaintiff *Mary* was delivered of a Son named *Richard*, and Differences arising between the Plaintiff *Thomas Nourse* and his Daughter *Mary*, the Widow of the Testator, and the said *Christopher*, concerning the Lands and the Custody of the Deeds, the same were referred to Arbitration, and *Bonds of Submission* were given to each other in the Penalty of 100 *l.* to stand to the Award of the Arbitrators.

Afterwards (*viz.*) 16 October 1651, the Arbitrators awarded, that *Christopher* should, in Consideration of 400 *l.* *seal and execute a Lease of the Leicestershire Lands* to the Plaintiff *Thomas Nourse and his Daughter Mary* for 20 Years, to commence from *Lady-day* 1651, and that all the Writings concerning the said Lands, which then were in the Possession of one *Nicholas*, should be kept by the Plaintiff *Mary* during the Minority of her Son *Richard*, and that if he died before he was of full Age or without Issue, by Reason whereof those Lands (except the Mother's Jointure) would belong to the Defendant *Christopher*, then the Arbitrators awarded, that *Mary* should, at the Request of *Christopher*, or his Assigns, not only deliver up to him the said Deeds, but the quiet Possession of all such Lands, which, at the Time of the said Child's Decease, was his Right, and also that *Thomas Nourse* should pay the said *Christopher*

83 *l.* for Rent, which he had received of the *Leicestershire* Lands, and also 147 *l.* for the Contingency of other Lands in *L.*

After this Award made (*viz.*) 16 October 1651, Articles were executed between the Plaintiff and the Defendant, by which *Thomas Nourse*, in Behalf of his Daughter *Mary*, agreed to perform the said Award, and he and his said Daughter gave each of them Bonds of 100 *l.* apiece Penalty, and the Defendant *Christopher* gave the like Bond for Performance of the Award.

And in November following (*viz.*) 4 Novemb. 1651, *Christopher* proved the aforesaid Will, and received the 400 *l.* and the 83 *l.* awarded to him, and 147 *l.* more, and then he conveyed the said Lands in *L.* to *Thomas Nourse*; and by Indenture dated 10 Feb. 1651, he demised the other Lands in *Leicestershire*, (called *Knewiston* Lands) to the said *Thomas Nourse* and his Daughter for 20 Years, from 25 March, &c. under the Rent of a Pepper-Corn; and *Thomas Nourse* and his Daughter executed a Counterpart of the said Lease to *Christopher*, who received the Rents of all the Lands, from the Date of the said Articles, during the Life of the Child, which Child, after the Expiration of the said Lease of 20 Years, and after he arrived to his full Age, suffered a *Common Recovery* of the *Leicestershire* Lands in *Michaëlmas-Term* 1671, and then made his Will, attested only by one *Hall*, and by him proved in Court *viva voce* at the Hearing; by which Will he made the said *Thomas Nourse* his Executor, who hath since proved it in the Prerogative Court, and by which he devised all his *Leicestershire* and *Gloucestershire* Lands to the said *Thomas Nourse* for Life, Remainder to the other Plaintiffs *Nourse Tate*, *William Tate* and *Charles Tate*; as the Plaintiff *Thomas Nourse* should by his Will appoint, and to the Heirs of their Bodies; and for Default of such Appointment, then he devised the same to the other Plaintiffs, *William* and *Charles Tate*, and to the Heirs of their Bodies.

Afterwards, *Richard Tarworth* the younger died, and then *Christopher* entered, and brought an Ejectment for the *Leicestershire* Lands, and put the Bonds in Suit for the Performance of the Award and Articles; to be relieved against which, &c. the Plaintiffs *Thomas Nourse*, &c. exhibit this Bill, to which *Christopher* answered, and disclaimed any Title, as to the Jointure-Lands, during the Life of *Mary*, and for ever to the Lands in *L.* which he sold to *Nourse*, but claimed the Reversion of the Jointure-Lands, and the present Possession of all other the Lands for the Residue of 99 Years only, and he pleaded to the said Bill the said Lease and Title at Law, and that the said Award and Articles, which the Plaintiff *Thomas Nourse* confesseth, are in Strictness of Law broken.

The

The Benefit of this Plea was saved to the Defendant *Christopher*, till the hearing this Cause, and that the Defendant *Christopher* should *have Judgment in Ejectment* with a Release of Errors, but Execution was to stay till the Hearing, which Release was accordingly given.

And now the Questions certified by Sir *Andrew Hacket* to arise upon this Case, were,

1. Whether the Lease and Residue of the *Term of 99 Years*, being made in Trust to *Christopher*, as aforesaid, doth either in Law or Equity belong to *Thomas Nourse the Devisee*, and Executor of *Richard Yarworth* the younger, the Defendant *Christopher* claiming only the *Residue of the said Term*, and not the Inheritance of the Lands.

2. Whether an *Estate-Tail* was well created in young *Richard Yarworth* by the Will of his Father, he the said *Richard* being not born till after his Father's Death.

3. Whether the *Residue of the said Term of 99 Years*, notwithstanding the *Recovery* suffered, and Will made by young *Richard Yarworth*, doth enure to the Use of the Executor *Christopher*, or is a Trust for him, who had the Reversion and Inheritance.

4. Admitting it to be a Trust for him who had the Reversion, then, whether the Plaintiff *Thomas Nourse* is not, both in Law and Equity by his own Articles, to deliver up the Possession, or *Christopher* to deliver up the *Bond and Articles*.

The *Lord Keeper*, upon great Deliberation, and being assisted by some Judges, declared, that since the Plaintiff *Thomas Nourse* had in this Court admitted the Law to be against him in this Point, (*viz.*) That as the Will of *Richard Yarworth* the elder is penned, nothing passed to *Richard* the younger, being then an Infant *in ventre sa mere*, for Want of apt Words to describe him; one Consequence whereof was, that the Remainder in Fee was so vested in *Christopher* by Purchase, that no after-born Son could divest it; and another Consequence of that Consequence was, that the *Remainder in Fee*, and the *Term for 99 Years* meeting together in *Christopher*, the *Term for Years* was thereby extinguished.

There remained nothing to be debated in this Case but Questions of Equity only, which are properly determinable in this Court; which Questions do not at all concern the Lands either in *L. or Gloucestershire*, which have been since conveyed away, nor the Lands in *Cann*, which were not comprised in the *Recovery* suffered by *Richard Yarworth* the younger, but relate only to the Lands in *Leicestershire*, and to such Lands which were comprised in the *Lease for 99 Years*, concerning which the general Question is, *What shall become of the Trust of that Term.*

And

And as to that Matter, the *Merger of that Term by the Accreter of the Fee-simple to it*, is of no Moment in Conscience, but that this Court is still free to dispose and settle it by the Rules of Equity.

Now admitting that the Father had been *cestui que trust*, and had made such Will, and it should be a Question, Whether the after-born Son could come into this Court to have Execution of such Trust; 'tis plain that he might, because the Construction of Law, whereby a Man is made to die without providing for his only Child, for Want of legal Words in the Will to describe him, is extremely rigorous and unnatural; and therefore, tho' such a Construction may prevail, where an Inheritance at Common Law is in Question, yet where the Disposition of a *Trust in Fee* comes in Question, Equity will never expound the Will to make a Disinheritance for Want of apt Words to describe the Child *in Ventre sa Mere*, unless there were plain Words to exclude him; the rather, because the Testator (in this Case) when he made his Will, saw that he had a Child very near its Birth.

And because the *Devise of a Trust* is not governed by the Statute 32 H. 8. and because of several Accidents which cannot be foreseen, this Court doth sometimes dispose of Trusts, according to the presumptive Intention of the Parties, without regarding the strict Words of his Declaration; and because Words, which are not altogether so artificial, will serve to direct a Trust, which will not serve to limit an Estate, the greater Difficulty will be in this Case, that since the Father at the Time he made this Will, was seised in Fee of the Reversion and *cestui que Trust* only of the Term, whether if the after-born Child himself was now Plaintiff in Equity, he could demand the Term.

'Tis true, there are two Objections that he cannot, the one is, if the Son should recover this Term in Equity, then one Consequence thereof would be, that the Father's Will would work by *Fractions*, (*viz.*) it would be a good Will in Equity for the Term, by Way of *Executory Devise*, and a void Will at Law for the Reversion; and another Consequence of that Consequence would be, that the Term which was created to attend the Inheritance would now be severed, and become in gross.

But both these Consequences are just and necessary, because 'tis fit that every Man's Will should hold as far as it may, if it cannot hold as far as the Testator would have it.

Now in the principal Case 'tis plain, that the Testator meant to give all to his Child, and thought that he had done it accordingly, but fails in the legal Words of Description, the Want of those Words may lose the Son the Common Law Estate of the Reversion, but ought not to deprive him of the equitable Interest of the Term; for where the Inheritance is carried away
by

by the rigorous Construction of Law, the Terms for Years shall never follow in a Court of Conscience, but the Attendency shall be severed by the Law of Equity, and the Terms become *in Gross*; for where long Leases are attending on Inheritances, they are always governed and controlled by the Conscience of this Court, as in the Case of Payment of Debts, or the like; and there can never be a more just Cause for this Court to sever the Attendency of a Lease, than where 'tis to mitigate and allay an unintended Disinheriton, so that if the after-born Son had been Plaintiff, he ought to have recovered this Term, and tho' he is now dead without Issue, yet the *Remainder in Tail to the Defendant Christopher* is void, because the Term is *in Gross*; and the now Plaintiff hath the same Equity which the after-born Son had, and ought to stand in his Place, because 'tis according to natural Equity, that every Man should dispose what is his own; and therefore that Equity, which the after-born Son had, must follow that Disposition which he made of it to the Plaintiff by his last Will; but he would lose his Property and Power of disposing, unless the Plaintiff is admitted to stand in his Place.

Now as to the Circumstances of this Case, there appears no Fraud in the Plaintiff in procuring the Will of the after-born Son, no Heir Male disinherited by this Construction, for the Defendant was not Heir Male, no Title of Honour or Dignity is insupported by it; but as the Plaintiff claims by a voluntary Disposol from the Son, so the Defendant claims by a voluntary Disposol from the Father, who by nice and hard Constructions of Law, and by picking Holes in Settlements, hath got more in Possession and Reversion than the Father intended him; to all which may be added, the long Admittance of the Father's Will, and the Acquiescence under it for twenty Years and upwards, and the Award itself made in 1651, admitting the Issue of the Son (if he should have any) to enjoy the Estate, which could not be if the Father's Will had been thought defective.

Wherefore, since the after-born Son hath by his Will devised the Whole to the Plaintiffs, which was more than he had Power to do; yet his Will ought to be held good for so much as his Power did extend unto, (*viz.*) to the *Trust of the Term*; and for this Reason the Plaintiffs ought not to deliver up the Deeds and Evidences concerning the *Leicestershire Estate*, but ought to be relieved against the said Award, Articles and Bond, and that the Possession of the said Lands ought to go with the Plaintiff, according to the said Trust.

Therefore it was decreed, that the Defendant shall make a Lease of the *Leicestershire Lands for the remaining Term of 99 Years*, to whom the Plaintiff shall appoint, clear of all Incumbrances; and that the Plaintiff, his Executors and Administra-

tors, shall hold and enjoy the same; and that the Defendant shall deliver up to the Plaintiff the said Bond for Performance of the Award, the Articles and the Award it self; but the Deeds and Writings concerning the Lands in *C.* in *Gloucestershire* are to be delivered to the Defendant, he confirming the Plaintiff *Mary's* Jointure, and the Deeds concerning the *Leicestershire* Estate to be brought into Court, there to remain for the Benefit of the Plaintiffs, their Heirs, Executors, and Administrators, during the Remainder of the said Term of *99 Years* by the said Lease to be granted, and afterwards for the Benefit of such Person to whom the Remainder or Reversion shall belong; and as to the Lands in *Cann* in *Gloucestershire*, after *Mary's* Death the Court left them to the Common Law.

And a perpetual Injunction to stay the Defendant's Proceedings at Law on the said Bond, Award or Articles, as to the *Leicestershire* Lands; and the Defendant to acknowledge Satisfaction on the said Judgment; and if the Parties differ about the said Lease, then Sir *Timothy Baldwin* to settle the same.

Jones, Plaintiff.

Crawley and Wolston, Defendants.

THE Case was, *ff.* There being some Differences between the Plaintiff's Wife and the Defendant *Crawley*, and he having brought an Action of *Assault and Battery* against her, in which Action some small Costs and Damages were recovered, and those Differences being referred to the Arbitration of the Defendant *Wolston* and another, he the said *Wolston* persuaded the Plaintiff *Jones* to enter into a Bond to *Crawley*, calling it a Writing, and telling him it was only to secure his Wife, that she might be quiet and peaceable for the future, and that he will not be damnified by it, whereupon *Jones* (the Plaintiff) who was an illiterate Man, entered into this Bond accordingly.

Arbitrator awarded what was never in Submission, and the Prosecution thereon set aside, and an illiterate Man being persuaded to give a Bond, which was afterwards put in Suit,

and Judgment obtained, that likewise was set aside.

Afterwards a fresh Quarrel happened between the Wife and the said *Crawley* on which she was twice *indicted* and fined 20 s. and *Crawley* put the Bond in Suit against her Husband, and had Judgment, and levied 5 l. in Execution; and now the Plaintiff exhibited a Bill to be relieved against the *Bond* and Judgment.

Y

The

The *Lord Keeper* was of Opinion, that the Plaintiff had suffered enough by paying the Fine, and that nothing was referred to the Arbitrators but the *Trespass and Assault*, that the Bond was only to keep the Peace, and no Money lent, and therefore unduly obtained, and the Defendant ought to have no Advantage by it ; therefore it was decreed to be cancelled, and Satisfaction to be acknowledged on the Judgment, but at the Charge of the Plaintiff, and a perpetual Injunction, and the Defendant to pay back the 5 *l.* Execution-Money, and to give the Sheriff a Discharge, which if he refuse, or give the Plaintiff any farther Trouble, then to pay Costs.

Charles Busby, *Esq;* Plaintiff.

Joshua Crosse, *Dr. of Laws*, Defendant.

Privilege of
the Univer-
sity pleaded
and allow'd.

THE Bill was, to have a Bond of 100 *l.* Penalty to be delivered up, the Money being paid.

The Defendant pleaded, that he is a *privileged Person* of the *University of Oxford*, (*viz.*) a *Dr. of Laws*, and resident there, which the Chancellor certified, and demanded *Consuance* of the Matter in Question, as examinable and to be determined in the Court held before him, or before the Vice-Chancellor his Deputy or Commissary, and not elsewhere.

The Court dismissed the Bill, and allowed the Plea.

John Ruton, per Sci. Fac. Plaintiff.

Henry Ascough, Defendant.

Bill of
Review
brought, a
Dismission
of a former
Bill of Re-
view, but
ordered not
to proceed
on it with-
out per-
forming the

THE Plaintiff moved, to discharge an Order made 13 *Novemb.* 1673, by which the Defendant was admitted to bring a *Bill of Review without performing the Decree*, he giving Security to pay *treble Costs* from the filing the said Bill of *Review*, if he was not relieved by it; and that a Dismission of a former Bill of *Review* should not be pleaded, nor prejudice the Plaintiff in bringing this Bill.

the Decree made upon the original Bill.

The Proceedings were very extraordinary (*viz.*) Anno 1646 the Bill was exhibited, and in May 1649 there was a Decree for the Defendant to account, who delayed a whole Year in settling that decretal Order; afterwards the Master made a Report, to which the Defendant put in several Exceptions, all which were disallowed, and the Report confirmed; and thereupon a Commission issued to the *Justices* to put the Plaintiff in Possession of the Lands decreed.

Then the Defendant was reported in Contempt, and Exceptions were taken to that Report, and those were over-ruled, and the Defendant was committed; then he brought an Action against the *Master* for making a false Report, and afterwards he brought a *Bill of Review* wrote in one hundred Sheets of Paper.

To this Bill of *Review* the Plaintiff, in the original Bill, pleaded Non-performance of the *Decree*, and demurred, for that there was no Error in Law in the Body of the Decree, and both the Plea and Demurrer were allowed, and that Bill of Review dismissed, and afterwards the said Dismission was signed and inrolled, but still the Defendant disturbed the Plaintiff in the Possession, and thereupon an Injunction was granted to quiet the Possession.

Then the Defendant petitioned the Parliament against the said Decree, and the Matter was referred to *Colonel Pride* and others, and in 1662, the Defendant brought an *Appeal* to the House of Lords; then the Plaintiff in the original Bill, and who had obtained the Decree, died, and the Defendant brought a Bill of *Revisor*, but being a Prisoner in the *Fleet* and so very troublesome, a Sequestration issued against his real and personal Estate; and upon a new Reference to a Master (the Defendant desiring a new *Bill of Review*) it appeared, that there was about 1200 *l.* due to the Plaintiff, being the Money decreed to him, with Damages and Costs; and that the Plaintiff had been at great Charge since the Sequestration issued, to defend the Lands from Actions brought by the Defendant.

And after all these Proceedings the Defendant (5 June 1673) was admitted to bring a new Bill of *Review*, upon his bringing 1200 *l.* into Court, (the Money reported to be due to the Plaintiff) but not otherwise; and yet the Defendant procured an Order 13 Novemb. 1673, to bring such Bill of *Review*, without bringing the Money into Court.

And now it was moved to discharge that Order, and the Plaintiff to plead to that Bill of *Review* as he should be advised, and that the Defendant having an Annuity of 23 *l. per Annum*, payable out of certain Houses in *London*, might be *dispaupered*.

Ordered, that since the former *Bill of Review* was not dismissed upon the Merits, and that a new *Bill of Review* is already filed, and Security given, according to the Order upon which the said

Bill was brought in, to which Bill the Plaintiff, now Defendant, appeared, he shall have Time to plead, answer, or demur, till the second Seal after the Term, and shall not plead the former Dismission; but in Regard the Defendant hath been very vexatious, he shall perform the former Decree before he shall be admitted to proceed upon the *new Bill of Review*, and shall be *dispaupered*, unless he shew Cause to the contrary at the first Seal after the Term.

Isaac Cleaton, *Plaintiff*.

William Levason Gower, *and* Francis Carleton,
Defendants.

The Defendant was decreed to perform an Agreement in Specie for opening Mines, tho' he objected that he was only Tenant for Life, and subject to an Action of Waste.

THE Plaintiff being Tenant to the Defendant Gower, by a Lease of Lands in *Coal-pit Banks*, and other Lands, Part of the Manor of *Kelsey in Shropshire*, in which there were *Mines of Coal, Iron, Stone, and Stones for building*, did, about *June 1679*, come to an Agreement with the Defendant, and with Sir *Thomas Gower* his late Father, that he (the Plaintiff) should *open the Mines*, and set on Foot the Works at his own Charge, the Defendant allowing *Cordwood* for that Purpose, at the Rates in the Bill mentioned, and that the Plaintiff should quietly enjoy and take to his own Use the *Coal, Iron, Stone and Stones for building*, within the Royalty of the said Manor and *Coal-pit Banks*, for ten Years, if the Defendant Gower, or any of his Issue Male, should so long live, to commence from *June 1669*, at or under the yearly Rent of 25 *l*.

Accordingly the Plaintiff entered, pursuant to this Agreement, and paid for the *Cordwood* at the Rate agreed on, and was at 200 *l*. Charge in building the Works, and continued Payment and Tender of the Rent, till of late the Defendant Gower, and the other Defendant, have made a subsequent Agreement with some other Person, &c. therefore the Plaintiff exhibited this Bill to have an *Execution of the former Agreement in Specie*.

The Defendant Gower says he is only *Tenant for Life*, and subject to be called to Account for *Waste*, and therefore he could not execute this Agreement, because 'tis inconsistent with his Power so to do, and that the other Defendant told him that he was circumvented in this Agreement.

The Court decreed, that Gower should execute this Agreement *in Specie*, as far as he was capable of doing it, and likewise shall satisfy the Plaintiff such Damages as he hath sustained in not enjoying the Premises according to the Agreement, and seal a Lease for ten Years, &c.

Francis Henry Carew and Lettice his Wife,
Plaintiffs.

John Carew, Gent. Richard Kibly, Gent. Ambrose
Holbech, Gent. Philip Appletree an Infant, by
his Guardian, and Jane Draper, Widow, De-
fendants.

THE Case was, *ss. Thomas Appletree* being possessed of a considerable personal Estate, and seised of several Lands, and intending to provide for the Plaintiff *Lettice*, did, by his Will dated 9 April 1664, devise to the Defendants *Philip* and *Jane*, and to the Plaintiff *Lettice*, all his Rings and Jewels equally to be divided between them, and gave several Legacies; and to the Defendants *Carew*, *Kibly*, *Holbech*, (and to one *Famer* since deceased) his Manor of *Dodington*, and other Lands, for all such Term and Estate which he had therein, and all other his personal Estate whatsoever upon Trust, that they, &c. should, with all convenient Speed after his Decease, sell his Stock of Cattle, Corn, and Implements of Husbandry, in the first Place to pay his Debts, and afterwards towards raising his Daughters Portions, (*viz.*) to the Defendant *Jane* 2500 l. and to the Plaintiff *Lettice* 2000 l. to be paid at their respective Ages of 21 Years; and if the Money arising out of his personal Estate should fall short, then the said Portions should be made good out of the Rents and Profits of his real and Leasehold Estates, and that the said Trustees should pay the Plaintiff *Lettice* 30 l. per Annum by quarterly Payments, until her said Portion should become due; and that after the said Portions were paid, then the Trustees should stand possessed of all the Leases, and all other his (the Testator's) Estate which should be unfold, for the Use and to the Benefit of the Defendant *Philip*, when he should attain to the Age of 21 Years, and that if he should not live so long, then in Trust for the Plaintiff *Lettice* and her Sister *Jane* the Defendant, at their Ages of 21 Years equally.

The Testator died, and soon after his Death, *Lettice* and her Husband exhibited a Bill against the Trustees, to perform this Trust, and that she might have her Portion of 2000 l. and Interest, and a third Part of the Rings and Jewels.

The Trustees say, that they have not Assets, and that the Portions should be gradually paid, as the Rents and Profits of the Lands should arise, or entirely when the Whole should be raised; and that no Interest is due to their Portions, neither have they (the Trustees) any Power to sell or mortgage the Lands

to

to raise the Portions, and that the Jewels are the Widow's *paraphernalia*.

The Court decreed, that the Leasehold Lands should be sold to supply what was deficient of the personal Estate, or that they should be mortgaged to raise the said Portions and *Interest*, and that the same, together with Interest and Damages, since the Parties were of the Age of 21 *Years*, should be paid to the Plaintiffs.

And as to the *Paraphernalia*, the Court was of Opinion that the Widow should have them, but made no Order.

Paul Foley, *Esq*; Plaintiff.

William Lingen, *Esq*; the Lady Alice Lingen, Widow, Thomas Lingen, *Esq*; and William Gregory, Defendants.

Lands conveyed to a Purchaser as a collateral Security to defend his Purchase, THE Case, *ff*. In January 1661 Sir William Lingen died, seized in Fee of the Manor of Stoke-Edith, and of several other Lands in the County of Hertford, which were then incumbered with great Debts. decreed to be sold, to discharge Incumbrances, and the Heir at Law to join in the Sale.

After his Death Henry Lingen his Son and Heir entered, and in November 1669, made his Will, and thereby, in Order to pay his own and his Father's Debts, and to raise Portions for his Brothers and Sisters, he devised to the Defendants and their Heirs, all his Manors and Lands in *Herefordshire* and elsewhere, in Trust, to sell the same, or Part thereof, and with the Money arising by such Sale, to pay the Debts in a Schedule annexed to his said Will, and declared, that his Heir at Law, after his Age of 21 *Years*, should confirm such Sale or Sales to Purchasers, with such Covenants for Warranties as the Trustees should think reasonable; and if his Heir refused so to do, then the said Trustees should give collateral Security to any Purchaser out of any Part of the Premises which should be unsold; and he annexed a Schedule to his Will, of Debts amounting to 1300*l*. besides Interest, and devised, that after Payment thereof, (and after Performance of some other Trusts mentioned in the Will) his said Trustees should convey the Residue of his Lands unsold to the Lady Alice Lingen his Mother for her Life, and afterwards

wards to his Brother *William Lingen* an Infant (now Defendant) and his Heirs for ever, and shortly after the said *Henry* died.

After whose Death the Trustees, in *December* 1670, entered into Articles for the Purchase of the Manor of *Stoke-Edith*, and other Lands in the Bill mentioned for 6100 *l.* and that all Incumbrances should be paid out of that Purchase-Money, and that 3100 *l.* Part thereof, should be paid at the Sealing the Conveyances, and the Rest within six Months after.

In *February* following the said Conveyances were executed to the Plaintiff *Paul Foley* and his Heirs, and at the same Time he paid 2358 *l.* which was applied to discharge the Debts of *Henry Lingen*, mentioned in the Schedule, and which incumbered the purchased Lands, but some other Debts were not discharged with which the Premises were chargeable; and *William Lingen*, the Brother and Heir, being then an *Infant*, and so not capable to confirm the Purchase, they the said Trustees, according to the Power they had by *Henry's* Will, conveyed the *Manor of Sutton* and other Lands unfold, by Way of *collateral Security* to the Plaintiff for 500 Years, that the Heir, when of Age, should confirm this Purchase with such Covenants and Warranty as therein mentioned, and that the remaining Incumbrances should be discharged out of the last Payment of the Purchase-Money.

But before the last Payment was due, the Trustees desired the Plaintiff, that 2300 *l.* Part thereof, might be applied to discharge a Mortgage made to one *Dr. Higham* of some Part of the Estate which was not included in the Plaintiff's Purchase, and whereof the Mortgagee was then in Possession, and they promised the Plaintiff, that if he would consent to it, they would sell some other Part of the Estate as soon as they could, and with the Money discharge the remaining Incumbrances on the Plaintiff's Purchase; to which the Plaintiff did consent, and the rather, for that the Trustees told him, that the Lady *Alice* and her Children would otherwise have nothing for their Support.

Thereupon the Trustees by a Writing agreed to sell other Lands for the Purpose, as aforesaid, and the Plaintiff relying on such Agreement, did, in *July* 1671, by the Appointment of the Trustees, discharge *Dr. Higham's* Mortgage, by paying 2300 *l.* and soon after, by their Direction, he paid the Rest of the Purchase-Money to several of the Schedule-Creditors, and took an Assignment of *Dr. Higham's* Mortgage in the Name of *Thomas Foley* and *John Lane*, in Trust to attend and corroborate the *collateral Security* therein mentioned.

That

That there were great Incumbrances still on the purchased Premises, and not discharged, Part whereof hath been extended, and the Plaintiff put to great Expences both at Law and in Equity to defend his Title, and yet the Trustees refuse to sell other Lands to discharge those Incumbrances, and *William Lingen*, the Heir at Law, being now of Age, refuses to confirm the Purchase, but colludes with the *Lady Alice* his Mother to defeat it, by setting up other Titles.

Therefore the Plaintiff, who is the Purchaser, exhibited this Bill against the Trustees, and against the Heir at Law, to discharge the said Incumbrances by Sale of other Lands, according to the said Trust and Agreement.

The Trustees, by their Answer, say they are willing to comply, but cannot without the *Lady Alice Lingen*, who refuses; and she confesses, that *Henry* by his Will devised the Lands to her and other the Trustees, &c. but that he was not *Compos Mentis* when he made such Will; however, that he could not devise the Premises in such Manner as he had devised them; and *William Lingen* answers to the same Effect as his Mother the *Lady Lingen* had done, but that the Plaintiff's Purchase was fraudulent.

The Court was of another Opinion, (*viz.*) that the Plaintiff was a fair and honest Purchaser, and therefore decreed, that *Alice Lingen*, *Thomas Lingen* and *William Gregory*, the Trustees shall sell so much of other Lands to them devised by *Henry Lingen*, as shall be sufficient to discharge the Incumbrances on the Plaintiff's Purchase, and that they execute Conveyances to him accordingly, in which *William Lingen* the Heir at Law shall join; and that with the Money arising by such Sale the Trustees shall actually discharge the Incumbrances by such a Time, &c. or in Default thereof the Plaintiff may tender a Purchaser to the Master, who is to look into the Incumbrances, and if such Purchaser will give as much or more than another, then the Trustees shall convey to him, in which Conveyance the Heir at Law shall join.

And that the said Heir at Law shall forthwith execute another Conveyance to the Plaintiff by Way of Confirmation of his Purchase with Warranty and Covenants, according to the Condition of his collateral Security (the Master to settle such Conveyance) and if he refuse or neglects, the Court will take farther Order therein;

That the Plaintiff may proceed to get Judgment in Ejectment on his collateral Security, with a *cessat Executio* till farther Order;

That *Thomas Lingen*, and *William Gregory* shall be paid their *Costs* and other *Expences*, and *Charges* about the *Trust*, out of the *Money* to be raised by *Sale*, or otherwise out of their *Trust-Estate*.

Sir Christopher Clapham and others, Plaintiffs.

Fabian Phillips and others, Defendants.

UPON a Motion in this Cause, the Question was. Decrees of this Court take Effect from the Time they are pronounced, and the Death of the Parties shall not hinder the Enrollment in convenient Time.
 ff. Whether if several Decrees are made between the same Parties concerning several Duties demanded, and Accounts directed, such Decrees may be set in Balance one against the other; and it was decreed by the Lord *Shaftsbury*, that they might; the decretal Order whereof was drawn up, and entered before the *Lady Clapham died*, (who was a Party in the Suit,) but the Enrollment thereof, and any farther Proceedings thereon were stayed until farther Order, at the Instance of *Mr. Wroth* and his Wife; and now the Question was, whether *Sir Chr. Clapham* may have Liberty to enrol the same, it being the last Decree pronounced; and may proceed upon the Account therein directed, the Defendants opposing it, for that the Suit abated (as they say) by the *Death of the Lady Clapham*, before the Enrollment of the Decree.

The *Lord Keeper* declared, that the Decrees of this Court ought to take Effect from the Time the Judgment of the Court was given, and the Decree pronounced in the Cause; and that the Death of the Parties ought not to hinder the Enrollment thereof in some convenient Time; for otherwise it might create new Trouble and Expences to the Party living.

If it should be otherwise, then the Decrees of this Court, which is the highest Court of Relief, would signify less than Judgments at Common Law; for these take Effect in the same Term, and at the same Time the Verdict is given, notwithstanding the *Death of the Parties*, and though 'tis not entered on the Roll, or Recorded till the next Term after; and in this Case the Enrollment of the Plaintiff's Decree was obstructed at the Instance of *Mr. Wroth* and his Wife, (who were two of the Defendants) with an Intent to frustrate the same.

For this Reason the Plaintiff ought to have the Benefit thereof, and therefore the Order to stay the Enrollment was discharged; and that the Plaintiff might be at Liberty to enrol it, and to take his Benefit thereof, as he should be advised.

Henry Foster, *Plaintiff*.

John Foster *an Infant*, by Jenet his *Mother and next Friend*, and Jenet and Katharine Foster, *Widows, Defendants*.

An Agree-
ment in
Marriage
decreed to
be perform-
ed.

Nicholas Foster (the Plaintiff's eldest Brother) was seised in Fee of the Manors and Lands in the Bill mentioned, Part whereof he purchased, and other Part he had by Descent or Settlement made by *Arthur Foster* his Father; so that after the Death of the said *Nicholas* without Issue Male, it would come to the Plaintiff *Henry Foster*, (being the third Son of *Arthur*) and to his Issue Male.

And the said *Nicholas Foster* being so seised, he and the Plaintiff *Henry Foster*, treated with *Sir Gideon Scott*, about a Marriage to be had between the said *Henry* and *Christian*, the Daughter of the said *Sir Gideon Scott*. Upon which Treaty which was had in *Scotland*, it was agreed that the Plaintiff *Henry* should have 10000 Marks Scots Money, as a Portion with the said *Christian*, and that *Nicholas* should convey the *Manors and Lands*, (in the Bill) so as after his Death without Issue Male all should remain and come to the Plaintiff *Henry*, and the Heirs Male of his Body, Remainder to the right Heirs of *Nicholas*.

The Marriage took Effect, and the Portion was paid, and in a short Time afterwards *Nicholas Foster* came to *London*, and died before any Settlement was made of these Lands, but made a Will, and therein declared that *Henry Foster* should have all his Lands.

Cuthbert Foster the second Son of old *Arthur* was of weak Understanding, and Provision was made for him out of particular Lands, (left out of the Settlement) which afterwards descended to *John*, and were not claimed by the Plaintiff, who now exhibited this Bill for Performance of the Marriage Agreement, and to have Conveyances executed for that Purpose, and to quiet the Possession.

The Court decreed the same should be executed, and that the Plaintiff should enjoy the Lands to him, and the Issue Male of his Body according to the Deed of Settlement; and to him and his Heirs all other the Freehold and Copyhold Lands which were purchased by *Nicholas*; and that *John Foster* at his full Age shall levy a Fine to the Plaintiff and his Sons, and their Issue Male of the Lands in the Deed of Settlement, and to the Plaintiff and his Heirs, of all the Freehold and Copyhold Lands which *Nicholas* had purchased.

Robert Burgh *an Infant, by his Guardian, Executor of Eleanor Burgh, Executrix of Robert Burgh, Plaintiffs.*

Humphrey Davis *and others, Defendants.*

THIS Bill was brought to be relieved against an Action of Joint Executors, one of them died, and the Executor of the Executor of him who was dead, brought a Bill to be relieved against an Action of Trover brought by the surviving Executor, who demurred for that the personal Estate of the Testator belonged to him as surviving Executor.

Trover brought by the Defendant Davis as surviving Executor of one Alexander Walwin, which said Davis, together with Robert Burgh, (the Plaintiff's Testator) were Executors to the said Walwin; and it was for a Trunk and Goods therein which belonged to the said Walwin, and now were in the Possession of the Plaintiff against whom the Action was brought, and against which Action he prayed to be relieved, for that he cannot have a Discharge, if he should deliver the Trunck, and is liable to be called to an Account for it in this Court, by the Legatees of Walwin.

The Defendant Davis demurred to so much of this Bill as concerned Walwin's Estate, or the Action at Law for that he is the surviving Executor of Walwin, and by Virtue thereof the personal Estate of the Testator belongs to him, being the Person in Law accountable to the Legatees for the same, and for that the Plaintiff's Bill doth not contain any Equity.

The Court allowed the Demurrer.

Bridget Armsted, Plaintiff.

Samuel Parker and Mary his Wife, Defendants.

AN Action of Trover was brought against Bridget Armsted, the now Plaintiff,) by the Defendant as Executor to the said Bridget's Son, Thomas Armsted, in which Action the said Executor obtained a Verdict for certain Goods, to which the said Bridget now claims a Title by her Bill, and to be relieved against the Verdict, and suggests that it was obtained against her; because she could not produce her Witnesses at the Trial to

Bill to be relieved against a Verdict, and Judgment in Trover, the Defendant pleads the said Verdict, and Judgment; the Plea was not allowed, but the Defendant ordered to answer.

Z 2 make

make out her Title; and that great Part of the Goods in the Declaration mentioned, and for which Evidence was given to the Jury, were secretly taken into the Possession of the Defendant *Parker* and his Wife, and by them disposed.

The said Defendants *plead*, that all the Matters prayed in the Bill were examined at Law.

And as to that Part of the Bill which seeks a Relief for the Defendant's Death, and Lodging at the Plaintiff's House, the said Defendants demur, for that the Plaintiff hath her Remedy at Law.

The Court disallowed the Plea, and ordered the Defendant, to answer, and that the Plaintiff should be concluded by such Answer; and that if the Defendants shall not in their Answer discover that some of the Goods, for which they had obtained a Verdict, do belong to the Plaintiff, then she shall pay them full Costs of this Suit.

But the Demurrer was allowed.

Petley Garnan, *Plaintiff*.

Edward Fox, *and the Dean and Canons of Windsor,*
Defendants.

An Omission
of a Clerk in
ingrossing
the Writings
was sup-
plied by a
Decree.

THE *Dean and Canons of Windsor* did, on the 14th of October, 8 *Eliz.* grant a Lease for 99 Years to one *William Woodman*, of the Manor of *Priors held in Berkshire*, and of the *Rectory of Wantage*, with the *Tithes* and Profits thereof, (of which the *Tithes* of the four *Closes* in the Bill mentioned are Parcel.)

Wm. Woodward and his Son *Robert*, in June Anno 40 *El.* did assign some Part of the said Manor and Rectory to *Wm. Wilmott*, for the Residue of the said Term of 99 Years then to come, (of which the *Tithes* of the said four *Closes* were Parcel;) upon Condition to be void upon Payment of 300 *l.* and the rest of the said Rectory and Tithes by several *Mesne Assignments* came to one *Fox*.

Anno 9 *Jac.* *Rob. Woodman* for a valuable Consideration assigned the Residue of the said Term of 99 Years, of and in the *Tithes* of the said four *Closes* to the said *Wm. Wilmott*, without any *Proviso* or Condition of Redemption; and afterwards the said *Robert* released the Condition of Redemption as to the said four *Closes* before mortgaged by him and his Father to the said *Wm. Wilmott*.

Soon afterwards *Wm. Wilmott* died, and then *George* the Son and Heir of the said *William*, (afterwards *Sir George*,) and who was also his *Executor*, became possessed of his Father's Term, who *Anno 14 Car. 2.* surrendered the same to the *Dean* and *Canons* of *Windsor*, who granted a new Lease to him in the Name of one *Thomas Gerrard*, which new Lease was of particular Tithes therein mentioned; but the *Tithes of the four Closes* were omitted by the *Chapter Clerk* in engrossing the Lease, though *Sir George* had contracted for the same, and they were really intended to be granted.

In *Feb. 1662*, *Fox* the Defendant Surrenders his Lease of the *Rectory of Wantage*, and takes a new Lease thereof with general Words, except what was before demised, and with other Exceptions, but the *Tithes of the four Closes* were not excepted; and afterwards *Fox* mortgaged this new Lease to *Sir Tho. Player* for 1150*l.*

In *May 1665*, *Sir Geo. Wilmott* for a valuable Consideration, surrendered his Lease; and thereupon the *Dean* and *Canons* granted a new Lease to the Plaintiff *Petley Garnan* for twenty-one Years, of and in several Lands and Tithes, and amongst the rest of the *Tithes of those four Closes*; which Lease was to commence from *Lady Day*, being 4 Months before the Expiration of the Lease for 99 Years.

In *March 1666*, the *Dean* and *Canons* in Consideration of 1150*l.* paid by the Plaintiff to *Sir Tho. Player*, and 200*l.* to *Dr. Meers*, and 200*l.* to *Wm. Garnan* with Interest then due, and all the Arrears of Rent to *Windsor-Church*, being 85*l.* and a Fine of 75*l.* for their Consent to renew upon *Player's* Surrender of *Fox's* Lease, which was mortgaged and forfeited to him, in all amounting to 1710*l.* besides Interest they granted to the said *Petley Garnan*, the Residue of the said Manor of *Priors held*, and *Rectory and Tithes in Wantage*, not before granted to him.

Then the Plaintiff exhibited his Bill against *Fox*, to redeem or be foreclosed, and *Fox* on the contrary exhibited his Bill to redeem; and this being heard before the Master of the Rolls, he decreed that *Sir George Wilmott* having contracted for all that was in the first Assignment to *Wm. Wilmott* his Father, of which the *Tithes of the four Closes* were Parcel, the Plaintiff ought not to account for the Tithes of those Closes, but only for all the Profits of the Premises in *Player's Mortgage*, except for the said four Closes.

And upon an Appeal from this Decree to the *Lord Keeper Bridgman*, he was of Opinion, that the Plaintiff should not account for the Tithes of these Closes; but that the Defendant *Fox* should have the Redemption thereof.



But

But it appearing upon the *Dean and Canons* Answer to the Plaintiff's Bill, that the Tithes of the *four Closes* were Parcel of the Tithes for which *Sir Geo. Wilmott* had contracted, and were omitted in *Gerrard's* Lease by a Mistake of the Chapter-Clerk, and that it was the real Intent and Agreement of the then, and now *Dean and Canons*, upon the Surrender of *Sir George*, to demise to *Gerrard* (amongst other Things) the Tithes of said four Closes, and that the Fine which *Sir George* paid was proportionably raised, in respect of the Value of the Tithes of the said four Grounds; and that *Gerrard* was always accounted the immediate Tenant thereof; the first Mistake of the Chapter-Clerk in leaving the Tithes of those Closes out of *Gerrard's* Lease, had occasioned another Mistake in *Fox's* Lease of the *Residue of the Manor and Tithes*, in which Lease there were general Words sufficient to pass the Tithes of those four Closes, though *Fox* never contracted for them, nor paid one Penny in respect thereof.

Therefore the Plaintiff having brought this Bill, to be established in the Possession of the Tithes of those four Closes, during the Residue of the Term granted to him by the Dean and Canons in 1665.

The *Lord Keeper Finch* decreed, that he should enjoy the same accordingly, and should be discharged from that Part of the former Decree made by the *Lord Keeper Bridgman*, that *Fox* should redeem, and the Plaintiff should convey the Tithes of the said four Closes to him.

Paul Bodenham, *Plaintiff*.

Hugh Bodenham, *Defendant*.

Feoffment
made with-
out Livery
and Seisin,
that Defect
supplied in
Equity.

THE Father being Tenant in Tail of the Manor Lands in the Bill mentioned, did, upon the Marriage of his Son the Plaintiff *Paul Bodenham*, make a Feoffment thereof (to the Persons therein named) to the Use of the Plaintiff, and the Heirs Males of his Body on his said intended Wife to be begotten, Remainder over, and died.

After whose Death *Hugh Bodenham* who was younger Brother to the Plaintiff, entered and kept Possession, pretending a Title from his Father whom he admitted to be Tenant in Tail, and to have made such Feoffment as aforesaid; but that it was void for want of *Livery and Seisin*, and that his father had levied

levied a Fine, &c. and devised the Lands to him the said Defendant.

And now upon a Bill brought by the Plaintiff to supply this Defect, the Court decreed, that the Settlement being admitted, and the Defect only for want of a Letter of Attorney to make that Livery, that at any Trial at Law to be brought by the Plaintiff his Brother, the Defendant shall admit *Livery* and *Seisin*; and this Decree was confirmed upon a *Rehearing*.

William Jones, *Plaintiff*.

Thomas Prior, *Defendant*.

THE Plaintiff in the Year 1665, became Tenant to the Defendant for *two Years*, of certain Lands under the yearly Rent of 160*l.* and there being about 45*l.* in Arrear for Rent, and he being indebted to some other Persons, in several Sums amounting to 130*l.* and some of his Creditors having got *Judgment* against him, and he being taken in Execution,

The Defendant *Price* came to him in Prison, pretending Kindness, and that he would get his Enlargement, and pay his Debts; and by this means he prevailed with the Plaintiff to make over his Stock and Goods to him, (the Defendant) which accordingly he did by Bill of Sale, to the Value of 400*l.* he (the Defendant) promising to pay the Plaintiff's Debts, and to return the Overplus.

The Defendant by Virtue of this Bill of Sale, possessed himself of the said Stock and Goods, and of some other Goods not comprised in the Bill of Sale; and likewise got into Possession of the said Farm, and received the Profits without giving any Account thereof, or discharging the Plaintiff's Debts contrary to the said Trust; and received Money from several Persons due to the Plaintiff, and without any Authority from him, and threatened to put the Bond in Suit, being in the Penalty of 160*l.* which the Plaintiff gave when he took the Farm, and the Defendant neither pays his (the Plaintiff's) Debts, nor had him discharged from his Imprisonment.

Upon hearing this Cause, upon a Bill brought by the Plaintiff, to be relieved against this Fraud and Breach of *Trust*,

The Court being satisfied that the *Bill of Sale* was made upon a *Trust*, decreed an Account to be taken of the Goods and Money received by the Defendant as aforesaid; and that the Master may have a Commission to examine and enquire into the same,

Bill to be relieved against a Bill of Sale, it, appearing to be made in Trust, and that Trust not performed.

same; and the Defendant to be allowed all his Rent, and what is due to him on the Bond.

And that if it appear there is any Money due to the Plaintiff, that then the Defendant shall pay it, and deliver up the Bond to be cancelled, and Costs of either side shall be reserved till the Report is made.

Richard Cox, *Administrator of Margaret Osborne, Widow, Plaintiff.*

¹ Ch. Rep.
238. S. C.

John Quantock *an Infant, by Thomas Quantock his Father and Guardian, Defendant.*

Joint Executors, and Residuary Legatees, one died, the Survivor shall have the whole, tho' this was

Hugh Osborne being possessed of a considerable personal Estate, made his Will in the Year 1669, and thereby gave several Legacies to several Persons in the Will named; and devised the *Residuum to Margaret Osborne, and John Quantock*, whom he also made *Joint Executors*, and soon afterwards he died.

against the Opinion of the Lord Keeper Finch.

After whose Death *Thomas Quantock*, the Father of *John*, possessed himself of the whole Estate, (the said *Margaret* the other Executor dying soon after the Testator, and before the Will was proved;) and the said *Thomas* proved the Will, and took out Administration *durante minore etate* of his Son, and refused to account with the Plaintiff who was *Administrator to Margaret* the other Executor, pretending that his Son, who was the *surviving Executor*, had thereby a Title to the whole.

Therefore the Plaintiff, who was the *Administrator of Margaret the Coexecutor*, brought this Bill against the *surviving Coexecutor*, to have a Moiety of the residuary Part of the Testator's Estate devised to them.

And the Court decreed, that the Plaintiff should have an Account, and Satisfaction of a Moiety of the residuary Part after Debts and Legacies paid; for though each Executor hath the whole in Law, and may possess, grant and release the whole; yet in Equity they are accountable, and ought to share the Profit and Loss between them equally.

Which Equity is not joint, but a separate Equity against each other, by which each Executor is entitled to a separate and divided Moiety of the *surplus* of the Testator's personal Estate, so that tho' the legal Interest may survive, yet the equitable Interest cannot.

And there is no Reason why the Remedy in this Court should not be reciprocal, (*viz.*) why an Executor or an Administrator of a Coexecutor may not as well demand an Account against the surviving Executor, as such surviving Executor may demand it against such Administrator or Executor of a dead Coexecutor; the rather because the Method of making Partition of the Testator's Estate is not very easy, because it may for the most part consist of Things in Action; and then if the Executors do not agree amongst themselves, each of them will contend for the Possession, and get as much as he can lay hold on.

And since the Law of Equity doth so far change the Nature of that Interest which Coexecutors have, that one of them whilst he lives may call the other to Account, there can be no Reason why the Benefit of that Account should be lost by his Death, no more than in the ordinary Case of *Joint-tenants for Years*, where Equity only gives an Account; and yet if one Joint-tenant dies before Partition made, his Executor may have an Account against the Survivor, for the Profits received in the Lifetime of the Testator, so that Equity seems to create a Trust between Joint-tenants, and Joint-executors as to the Matter of Account.

'Tis true the Difference is reasonable, where an Executor refuses before the Ordinary, and dies under such Refusal, his Executor or Administrator shall have no Benefit of the first Executorship, because the first Executor himself could have none, nor any Remedy in Equity till Probate of the Will; but 'tis otherwise where an Executor dies before Refusal, as in this Case *Margaret* did.

And therefore for these Reasons, and for that there could be no Inconvenience, but the contrary, in the true and quiet Administration of Executors, the Lord Keeper decreed, that the Defendants should account for what of the Testator's Estate came to their Hands, with all just Allowances after Debts and Legacies, &c.

And that after such Allowances, the Defendants should pay an equal Moiety of the residuary Part to the Plaintiff; but if any Improvement had been made of the Estate at the Trouble or Charge of the Defendant, the same should redound solely to his Benefit, it being reasonable he should reap the Fruits of his own Labour; and that if there was any Loss by the Account, Neglect or Default of the Defendants, or either of them, it should be made good to the Plaintiff, according to his Proportion of the said Estate; and if there was any Improvement of the Estate, by reason of the Care of the Testator, and the Order and Method in which he left it, that the same should be equally divided as well as the Principal, and with these Directions the Account was to be taken.

A a

But

But afterwards the Counsel for the Defendants insisting, that there was not any Precedent to warrant this Decree; and that this Judgment in Equity will be an Invasion upon the general Course of the Law in the like Cases, they prayed the Lord Keeper that he would *review his Decree*, who thereupon directed that the Lord *Chief Justices Hale and North*, and the Justices *Rainsford, Windham, Atkins and Ellis*, should be attended with this Order, and to certify their Opinions in this Case, who being severally attended, they gave no Opinion.

1 Ch. Rep.
238 otherwise reported.

Whereupon the *Lord Keeper* taking the Matter again into Consideration, and finding no settled Judgment of the Court in it, and being unwilling to create a Precedent, ordered the Bill to be dismissed, but without *Costs*.

*Sir William Glascock and Elizabeth his Wife,
Plaintiffs.*

*Susan Brownwell, the Widow of John Brownwell, and
others, Defendants.*

Bill to have a Legacy of 1000*l.* and discover Assets. The Defendant pleads that the Money was to be paid upon a Condition, and that the Party died before the Condition was performed; this Plea was not allowed.

John Brownwell upon a Treaty of Marriage to be had between *Mary* his Daughter, and *Sir Rob. Dacres* amongst other Securities, gave a Bond of 2000*l.* Penalty to *Tho. Dacres*, Father of the said *Sir Robert*, conditioned to pay 1000*l.* *within seven Years after the said Marriage*, (which afterwards took Effect) and after a Jointure of 600*l.* *per Annum* should be settled on her.

Upon a Bill to have Satisfaction for this 1000*l.* the Plaintiff suggests, that *Thomas* the Father did make a Jointure to the said *Mary* of 600*l.* *per Annum*, which was a Performance of the Condition of the Bond on his side; and that it was accepted as such by some subsequent Agreement, and makes a Title to this 1000*l.* by a Devise of *John Brownwell*, and therefore prayeth a Discovery of Assets in the Hands of the Defendant *Susan*, the Widow of *John Brownwell*, towards Satisfaction, &c.

Susan pleads, that *Tho. Dacres* the Father died within *seven Years after the said Marriage*, and after the Date of the Bond, and had not made to *Dame Mary*, or to her Use, a good and sufficient Jointure of 600*l.* *per Annum*, according to the Condition of the said Bond.

And

And as to the Demand of the 1000*l.* and a Discovery of *Assets* she demurred, for that the 1000*l.* was not payable, but upon a * Condition, which Condition was never performed; and that if any Thing is due to the Plaintiffs, they ought to sue the Bond at Law, and not first come into this Court for Relief.

* Conditions which are independent on the Will of the Con-

tractor, such as Death, or other casual Events, when they come to pass, do by the Civil Law dissolve the Agreement. *Dem. 1. Vol. 48.*

The *Lord Keeper* decreed, that as to so much of the Plea, and Demurrer as relates to the Agreement and Settlement, and Acceptance of the Jointure, so as to entitle the Plaintiff to a Duty, and Demand of the 1000*l.* in Equity, the same should not be allowed; and therefore it was over-ruled.

And as to so much as seeks a Discovery of *Assets* and personal Estate, to satisfy the said 1000*l.* the Defendant's farther Answer was respited, till the Hearing of the Cause.

Dumford, *Plaintiff.*

Dumford, *Defendant.*

THE Defendant pleaded, that there was a former Bill depending, and brought by the same Plaintiff, for the same Matter as in this Bill.

Plea of a former Bill, depending brought by the same

Plaintiff for the same Matter, and Demurrer for want of Equity. The Demurrer was over-ruled with Costs, &c.

And demurred, for that there was no Equity in the Bill, and that the same being 200 Sheets of Paper was stuffed with Repetitions, *Tautologies* and *Impertinencies*.

It was insisted by the Counsel for the Plaintiff, that by reason of the Demurrer, he could not procure a Reference to the Master, to examine whether there was a former Suit depending or not.

Thereupon the Court over-ruled the Demurrer with Costs, and referred it to the Master to examine into the former, and this Bill, and if he found it for the same Matter, then to tax Costs for the Defendant.

Samuel Berry, *Plaintiff*.

Henry Wade *and* Margaret *his Wife*, *Defendants*.

An Award made, that the Defendant should convey such a Parcel of Ground, &c. to the Plaintiff, &c. the Defendant pleads, that before the Award made, he and his Wife were jointly seised of the said Lands; and that she is not a Party to the Submission, tho' this Plea is a good Bar to the Award, yet the Defendant was decreed to convey, &c.

THE Plaintiff being about to build some Houses in *London* near the Ground of the Defendant, proposed, that the Defendant should have so much of his (the Plaintiff's,) Ground for an *Alley*, if he (the Defendant) would set out so much of his own Ground *in lieu* thereof for the Plaintiff to build on; and this was agreed on between them, and the Plaintiff accordingly built on the Ground so set out; and afterwards the Defendant refused to confirm this Agreement, but brought an Ejectment against the Plaintiff; and the Matter being referred to Arbitrators, they made an Award, that the Defendant should convey such a Parcel of Ground to the Plaintiff as was agreed on.

And now the Plaintiff brought a Bill to have this Agreement and Award performed.

The Defendant denied the Agreement, but only that there was some Discourse about the Matter suggested in the Bill, and about the *Alley*, but no other Agreement.

And as to the Award he *pleads*, that before the Submission and the Award made, he and his Wife were jointly seised of that Piece of Ground awarded to be conveyed to the Plaintiff, and that she is no Party to the Submission; besides that the Award it self is void, because of the Incertainty thereof, for a *Piece of Ground* was awarded to be conveyed without *mentioning any Estate therein*.

It was agreed by the Counsel for the Plaintiff, that this Plea was a good bar to the Award; but yet the Court decreed, that the Defendant should convey the said Parcel of Ground to the Plaintiff according to the Agreement, and the Master to settle it.

Sir John Knight, Francis Knight, and Isaac Knight,
Plaintiffs.

Ursula Knight, *Widow, Defendant.*

THE Case, *ff. George Knight* being possessed of several Trust of a
Messuages and Lands in the County of *Somerset*, for the Term of
Term of 80 Years, under the yearly Rent of 20 s. did, in Con- Years limit-
sideration of a Marriage to be had between *Wm. Knight* one of ed to a
his Sons, and the Defendant *Ursula*, and of a Portion of 600 l. to Man and his
be paid with her, grant and assign the Premises by Indenture Heirs after
dated 9 May, 18 Car. to certain Trustees (therein named) in Trust the Death of
for his said Son *William* for Life; and afterwards to the said *Ur- one dying*
sula for so many Years of the said Term as she should live, and without Is-
afterwards for *such Child and Children as they should have be- sue, is void.*
tween them, and to their assigns for the Residue of the said Term;
and for Default of such Issue, then to permit the * Heirs of the * This Li-
said *George Knight*, and their Executors, Administrators and mitation is
Assigns, to enjoy the Premises during the Residue of the said void, be-
Term which should be then unexpired. cause 'tis not
to take
Place till af-
spent, which

ter the intermediate Remainders to *William* and *Ursula*, and their Children, are
tends to a Perpetuity.

The Marriage took Effect, and afterwards *Wm. Knight*, by
his Will dated 1 January 1654, devised his Goods and Estate
to his Wife *Ursula*, whom he made sole Executrix, and died, lea-
ving *Fitzherbert Knight* his only Son.

Afterwards one *Fanner* who was the surviving Trustee, did by
Indenture dated 3 June 19 Car. 2. grant and assign the Premises
to the Defendant *Ursula* for so many Years of the said Term as she
should live.

In the Year 1672, *Fitzherbert Knight* died, and in the next
Year *Ursula* administred to him, and by Virtue thereof, and of
the Assignment made to her by the surviving Trustees, and of the
Devise made to her by *Wm. Knight* her Husband, she claimed the
whole Benefit of the said Lease, and pleaded all this Matter to a
Bill exhibited against her by Sir *John Knight*, and *Fran. Knight*,
who as Executors of *Geo. Knight*, claim the Remainder of the
Term (if any) after the Death of *Ursula*, and *Isaac Knight* claims
the Inheritance afterwards as Heir to the said *Geo. Knight*.

The Court declared, that the Limitation to *Geo. Knight* and
his Heirs, by the Deed of Trust 9 May 18 Car. which was not
to take Place till after the intermediate Remainders to *William*
and *Ursula*, and to their Child or Children, are spent, cannot by
any Presumption of Law take any Effect during the 80 Years, for
it

it tends directly to create a Perpetuity; and is therefore void in Law; and the whole Interest of the said Lease for the Residue of the Term of 80 Years is vested in *Ursula* and her Assigns.

And therefore the Court allowed the *Plea*, and dismissed the Bill, and ordered that the Writings by which the *Inheritance* is conveyed, and by the Answer confessed, should be delivered to the Plaintiffs, or to whom they belong.

John, Eleanor, Richard, Alice Judd, Plaintiffs.

George Arnold, Defendant.

THE Lady Anne Eldred had two Sisters, (viz.) Joan Yates and Mary Judd, and being possessed of a great personal Estate, made her Will in these Words:

I Dame Anne Eldred do give and bequeath 300 l. to each of my Sisters Joan Yates, and Mary Judd's Children, and if any of them die before the Money be paid, then the Money which should have been paid to such Child, shall be divided between the Grandchildren of my said Sisters, the said Legacy to be paid before any other; and made the Defendant George Arnold, Executor.

* All now dead.

Mary Judd had Issue * *John*, * *William*, *Margery*, *Mary*, and * *Anne Judd*.

John the elder Son of *Mary* had Issue, the four Plaintiffs, who as Grandchildren of *Mary*, exhibited this Bill to have the Legacies of their Father *John*, and of their Uncle *William*, and of their Aunt *Anne*, who all died in the * Life-time of the said Testatrix *Anne Eldred*.

* By the Civil Law, a Legacy is not due, un-

less the Legatee survive the Testator; and this agrees with the Common Law for the; Death of the Legatee is a Countermand of the Devise, and the Thing devised can never vest in him; because he was not in Being when the Devise should take Effect.

The Court was of Opinion, that the said three Children of *Mary* being dead at the Time of the making the *Lady Eldred's Will*, they could take nothing either by the Words, or by the Intent thereof, both which were fully satisfied; because *Mary* and *Margery*, the two other Children of *Mary* were living at the Time of the Death of the said Testatrix, to which surviving Children the Defendant had paid the 300 l. a-piece, and nothing due to the Plaintiffs, or either of them; and so dismissed their Bill.

Francis Harmore *and* Elizabeth *his* Wife, *Plaintiffs*.

Doble Brook, Birkenhead Collins, John Hamlin, Tho.
Hamlin *an Infant*, by the said John *his* Guardian,
and George Banister, *Defendants*, & *econtra*.

THE Plaintiff *Elizabeth* being the only Daughter and Heir of *Thomas Hamlin* deceased, he upon her Marriage with the Plaintiff *Harmore*, agreed to pay him 500 *l.* at Christmas next after the said intended Marriage; and to convey to him and his Heirs, an House at *Harpsted Green in Sussex*, and likewise at his Death to give and secure to his said Daughter all his real and personal Estate whatsoever, except 50 *l.* or 100 *l.* and entered in-
Articles in Marriage to pay 500 *l.* with his Daughter by such a Time, and to secure to her all his real and personal Estate when

he died; and afterwards he devised all his personal Estate to another, which being contrary to the Articles, that Agreement was decreed to be performed.

The Marriage took Effect, but afterwards the said *Thomas Hamlin* made his Will, and the Defendants Executors, during the Minority of *Thomas Hamlin the Infant*, Defendant, to whom he devised his personal Estate, who now claims the same, though the Testator had no Power to make such Devise, it being contrary to the said Articles.

Whereupon the Plaintiff exhibited his Bill to have this Marriage Agreement performed, and upon an Issue directed to try whether the said *Thomas Hamlin*, (the Plaintiff's *Elizabeth's* Father) did agree to give to the Plaintiff *Harmore* in Marriage with her any other, or farther of his real or personal Estate at any Time, over or above the said 500 *l.* the Jury found for the Plaintiffs.

Thereupon the Court decreed the Marriage-Agreement to be performed, and that the Executors, the Defendants, shall stand and be Executors in Trust for the Plaintiffs, (except as to 100 *l.*) that they may have the Benefit of the Marriage-Agreement, and the personal and real Estate of the said *Thomas Hamlin* deceased; and that they deliver up to the Plaintiff the Probate of the Will, and convey and release to him all such Estate, Title and Interest whatsoever, which they may or can claim by Virtue of the said Will, or otherwise, (except 100 *l.*) which they are to keep for the said Infant, who at his Age shall execute the like Conveyance to the Plain-

Plaintiffs; in the mean Time the Executors shall permit the Plaintiffs to sue in their Names, for any of the said personal Estate, and shall not release such Actions, nor any Debt or Demand; and the Writings shall be brought into Court, and be delivered to the Plaintiffs.

The Defendants shall account, &c. and deliver up on Oath to the Plaintiffs all such Securities which they have in their Custody or Power concerning the real and personal Estate of *Thomas Hamlin*; and thereupon the Plaintiffs shall satisfy them all such Money as shall appear upon their Oath they have expended in Law Suits, or otherwise, about the said Will; and shall give the Defendants such Security, (as the Master shall approve) to indemnify them from the Creditors and Legatees of *Thomas Hamlin*, and all future Costs and Damages they shall expend or sustain by the Executorship, or relating thereunto, or Performance of this Decree.

And they (the Defendants) to be protected by the Decree of this Court, for what they have or shall do in Performance thereof against the Infant, and all other Persons that may claim under the Will.

Mary Brown, *Widow, Plaintiff,*

William Savage, *Executor of her Husband* Thomas Brown, *Esq;* and Roger Sayer, *Defendants.*

A Bond taken away fraudulently and cancelled; it was decreed that the Plaintiff should have as much Benefit by it as if it had not been cancelled. And Releases awarded of what was never submitted were set aside.

THE Plaintiff *Mary Brown* being the Widow and Executrix of *John Chappell*, who died possessed of a personal Estate, to the Value of 6000*l.* upon a Treaty of Marriage between her and the Testator *Tho. Brown*, it was agreed by *Articles dated in Sept. 1649*, that the said *Mary* should take and receive to her own Use during the *Coverture*, and without her Husband's Control, the Sum of 1000*l.* to dispose as she pleased; and that *Thomas Brown* her intended Husband should leave her 6000*l.* at his Decease for her own Use, and for the Use of the Children which she by him might have, who were to be equally provided for with his other Children by his first Wife.

And in order to corroborate this Agreement, he the said *Thomas Brown* did, on the Day before his Marriage with the said *Mary*, (*viz.*) 8 October 1645, seal and execute a Bond in the Penalty of 10000*l.* to one *William Summers*, *Roger Sayer*, and *John Chappell*, conditioned (amongst other Things) that if the said *Mary* should survive him, to leave her at his

his Death 6000 *l.* to be paid at three Payments, within eighteen Months; but if the said *Thomas Brown* should purchase Land to the Value of 3300 *l.* and assign the same to her, together with his Houses in *Woodstreet* and his Manor of *Bredon*, for the better securing the said 6000 *l.* then the Bond to be void.

The Marriage took Effect, and the Obligees delivered this Bond to the Plaintiff *Mary*, who locked it in her Cabinet, but her Husband *Thomas Brown*, or some other Person by his Order, opened the Cabinet, and took it away, and cancelled it, and afterwards he refused to perform his Agreement, but sold his said Manor and Houses, and received the Money, and died in *April* 1673, having first made his Will and the Defendant *Savage* his Executor, who proved the same, and possessed himself of great Part of the personal Estate, but refused to pay the 6000 *l.* insisting, that the Bond was cancelled by the Trustees, in Pursuance of an Award made for that Purpose, and that the Trustees had given a *Release* to *Thomas Brown*, by which the Bond was discharged, and that the Testator's Estate was not worth 6000 *l.* and that if the Plaintiff should be paid, all the other Creditors must be unpaid.

All this Matter * appearing in this Cause, and that *Thomas Brown* had 4000 *l.* with the said *Mary*, and 100 *l.* per Annum in Lands, and that he the said *Sayer* delivered to *Brown* 3500 *l.* of *Chappel* the first Husband's Estate well secured, and that he received the whole Money, and above 500 *l.* of other Debts due to *Chappel*; and that afterwards there were several Suits between *Brown* and the Obligees, which were referred to Arbitration, but that the Bond was not concerned therein, and that the Releases given upon the Award had no Relation to the Bond, nor was there any Discourse about it, nor any Recompence made or intended to *Mary* by that Award in Satisfaction of the Bond.

* This is a Fraud, and therefore it must appear in Proof, for by the civil Law it shall never be presumed. Dom. 1 Vol. 256.

Upon hearing this Cause, the Court was satisfied, that *Brown* the Husband was the Wrong-doer, and that he cancelled the Bond, therefore the Plaintiff *Mary* ought to have Satisfaction out of his Estate, and as much Benefit upon the Bond as if it had been uncanceled, and that it ought to take Place of all *Brown's* Debts of an inferior Nature, and that in such Case, *Sayer* shall not be chargeable with a Breach of Trust.

Decreed, the 6000 *l.* with Damages to the Plaintiff, to be paid by the Defendant *Savage*, the Executor of *Brown*, from the Time the same was payable, so far as his Estate will reach, and that he account for all *Brown's* Estate which came to his Hands, or to his Use, or by his Direction since the Testator's Death; allowing to him the Payment of all Debts by Record, or of an higher Nature than by Specialty, and all Debts by Specialty, which he paid before the filing the Bill.

B b

But

But what Debts by Judgment have been paid since the Bill exhibited, which were in equal Degree with the said Bond, the Master is to report specially; but what Debts by Judgment hath been paid since *Savage* the Executor had Notice of the Plaintiff's Demand of 6000 *l.* or since the Bill exhibited, and which were Debts of an inferior Nature, those are not to be allowed; and what Payments have been made before such Notice, whether upon Judgments, or otherwise for Debts of an inferior Nature, the Master is likewise to report specially.

Peter Badtolph, *Plaintiff.*

Samuel Bamfeild, Samuel Cook, Richard Shipden,
and others, Defendants.

The Plaintiff having seized and condemned Goods in another Kingdom according to their Law,

THE Case, *ff. The King of Denmark* and his Predecessors have been, Time out of Mind, Lords and Owners of the *Island, Dominions, and Country of Iceland* beyond Sea, and no other Prince or Estate had Power to trade there, but such who had a Grant and Authority from the *King of Denmark* for the Time being, so to do.

was prosecuted by several Actions after he came into *England*, at the Suit of the former Owners of those Goods, but a perpetual Injunction was granted.

That the said Kings, for the Increase of their Revenue, have usually granted and let to Farm the said *Island* and the Trade thereof to certain Persons, prohibiting all others, and that *Frederick the Third*, late King of *Denmark*, in the Year 1662, had granted to *Hans Peterfon* and others (whereof the Plaintiff's Father was one) and to their Assigns, all those Parts of *Iceland*, and this was under the great Seal, and for the Considerations in the said Grant mentioned, to have the sole Liberty of *importing* and *exporting* Commodities to and from thence, and of the outward Trade thereof, in exchanging and importing Commodities for 200 Years, with a Prohibition to all others under a Penalty of Seizure both of their Persons, Goods and Ships, whereof two Thirds, after Charges deducted, was to go to the King, and the other third Part to him who should seize.

Anno 1665, the Plaintiff's Father assigned his Interest in the Premises to the Plaintiff, who went thither accordingly to trade, and he finding the Defendants clandestinely trading there, and after they had Notice of the said Grant, seized and condemned their Effects there, according to the Laws of that Country, and

two Thirds were adjudged to the Use of the King of *Denmark*, and the other third Part to the now Plaintiff.

Anno 1673 the Plaintiff coming to *London*, the Defendants brought Actions against him, and arrested him at several of their Suits in Actions to the Value of 2000 *l.* (tho' the Goods seised did not amount to 350 *l.*) and held him to Bail.

This being the Case, the Plaintiff exhibited his Bill for an Injunction, and to stay the Proceedings at Law.

Whereupon the Court being of Opinion, that this was a *Matter of State*, and concerned the Justice of another King in Amity with the King of *England*, and that what was done there was according to their Law, and that it was not properly triable here, whether the King of *Denmark* had Power to make such a Grant,

And therefore decreed a perpetual Injunction, and to discontinue such Actions wherein no Judgment was had, and to acknowledge Satisfaction on Record where Judgments had been obtained.

The Attorney General on the Behalf of the King, and the Rector of Chiddeston cum Farley in Hampshire, and the Churchwardens and Overseers of the Poor of that Parish, Plaintiffs.

The Lord Newport, the Lady Bridget Worsley, Widow of Sir Henry Worsley, Sir Robert Worsley, Baronet, Son and Heir of Sir Henry, and Sir James Worsley his Brother, and Bridget Worsley, Defendants.

THE Case, *ss. Theodosia Wallop*, Daughter of Sir Henry Wallop, being seised in Fee of the Manor of *Eaton Constantine in Shropshire* of the yearly Value of 200 *l.* did, by her Will dated 25 April, 1656, (amongst other Things) devise 1000 *l.* to place out poor Children Apprentices from the Parishes of *F.* and *C.* in such Manner as her *Executor* should appoint, and charged the said Manor with this 1000 *l.* and by her said Will she devised the Inheritance of the said Manor to the *Lady Worsley* and her Children, the now Defendants, who entered into the same, and never paid the Charity, but sold this Manor to the *Lord Newport* for 3000 *l.*

Lands charged with the Payment of 1000 *l.* for a Charity, the Money was paid to the Executor of the Donor, and the Lands were afterwards sold; it was decreed, that the Payment it ought to be paid to the Parson of the Parish, by the Statute 7 Jac. and that the Charge shall be still on the Lands.

The Defendants alledged, that the 1000*l.* was paid to the *Executor* of the *Executor* of the *Donor*, which, if true, was paid to a wrong Hand, and therefore it was insisted by the Counsel for the Charity, that it was misemployed and abused, it being expressly required by the Statute 7 *Jac.* that it should be paid to the * *Parson* of the *Parish*, and employed by him and the Churchwardens and Overseers of the Poor of the said *Parishes*, who are thereby impowered and directed to receive and dispose the same for the Uses intended by the *Donor*.

* This is in Conformity to the Civil Law, which is, that the Bishops of

the respective Dioceses should see, that what is given to charitable Uses be duly applied, according to the Intention of the Giver, and that ever since the Foundation of Christianity it hath been the peculiar Province of Bishops to take Care of the due Application of Things given to charitable Uses. *Dom.* 2 Vol. 108.

And the Court was of that Opinion, and therefore decreed the Defendants (against whom the Bill was exhibited) to pay the same, with Damages from the Time it was payable, to the * *Parson*, giving Security, as the Master shall approve, to apply the same according to the Will of the *Donor*.

That the Manor purchased by the *Lord Newport*, shall be charged with the Payment, and he to be reimbursed by the other Defendants.

The *Parson*, &c. to put the Money out at Interest, or rather to purchase the Inheritance of Lands therewith; and that the yearly Rents be employed as the Will directs.

Term.

Term. Sancti Hill.

27 Car. 2. Anno 1674-5.

Richard Bassett, Esq; Plaintiff.

The Lady Martha Bassett, Widow of Sir William Bassett, Defendant.

SIR William Bassett, the Plaintiff's Brother, being seised in Fee of the Manor of *Beaupre*, and other Lands in *Glamorganshire*, settled the same on himself and the Defendant *Martha* his Wife, and to the Survivor for Life, without Impeachment of Waste to Sir William only, Remainder to his first Son in Tail Male, &c. Remainder to his own right Heirs.

Injunction
against a
Jointure to
May Walter.

In September 1667, Sir William Bassett by his Will devised his real and personal Estate to the said *Martha* for Payment of his Debts, and if she died before his Debts were paid, then he devised all his Lands and Tenements to his Brother *Richard Bassett*, the Plaintiff first paying all his Debts and 1000 l. apiece to his Sisters *Katharine* and *Mary*, and afterwards Sir William died without Issue.

In October 1667 *Martha* entered, and by a Feoffment granted all her Lands in Possession and Reversion, which were devised to her by her late Husband's Will (her Jointure only excepted) to her Son in Law Sir *Edward Mansel*, he undertaking to pay all the Debts and Legacies of Sir William Bassett, but for Want of Livery and Seisin no Estate passed by that Grant.

Anno 1668, Sir *Edward Mansel* came to an Agreement with the Plaintiff, that he (the Plaintiff) paying Sir William Bassett's Debts and Legacies, Sir *Edward Mansel* would secure the Estate to him, and that *Martha* should release all her Right.

Accordingly the Plaintiff paid 3500 l. of the Debts of Sir William Bassett, and afterwards in the Year 1671, exhibited his Bill in this Court to compel *Martha* and Sir *Edward Mansel* to convey the Premises to him and his Heirs; and after several Hearings and Appeals, it was decreed by the Lord *Shaftsbury* on

31 January 25 Car. 2. that the Plaintiff should have a perpetual Injunction against *Martha*, and all claiming under her, to quiet his Possession, and that she and *Sir Edward Mansel* should execute Conveyances, &c. to the Plaintiff.

Which Decree the Defendants have not performed, but suffer the House and Outhouses, which cost above 5000 l. in building to be in Decay, so that 500 l. will not repair them; and she hath pulled down a large Ox-house, and plowed up Pasture and Meadow Ground, worth above 40 s. per Acre, and pretends, that as to her Jointure-Lands she is *dispunishable for Waste*, therefore the Plaintiff exhibited this Bill against her to compel her to repair, and to restrain her from committing Waste.

The Court decreed, that he should repair the Premises as they were at *Sir Wm. Bassett's* Death, and keep them so repaired, and a perpetual Injunction to restrain her and her Agents from plowing the Pasture and Meadow Lands of her Jointure.

Anne Beak, Widow of Elias Beak, Joan Beak, Anne, Sarah, Infants, by their Mother and Guardian, Plaintiffs.

Arnold Beak, Brother of the said Elias, and Abraham and Samuel Beak, Defendants.

An Account in Partnership in Trade shall not be inspected after the last Balance.

THIS Bill was, to have an Account of the Estate of *Elias Beak* deceased, and of a Stock of Money by him brought into Trade with the Defendant *Arnold Beak* his Brother, in Wines, Corn, Salt, &c. in the Year 1648, wherein he was to share one Third, and the Defendant two Thirds, in Profit and Loss, and the Bill sets forth, what *Elias* brought in, and what his Brother *Arnold* did, or ought to have brought into the Partnership.

That in April 1662, a Balance was made, and then *Elias's* Stock was 9803 l. that from the Year 1648 a joint Trade was carried on between the Brothers till February 1673, and the Books successively kept in Dutch by *Samuel Beak*, one of the Defendants, that several Balances were made in loose Papers, and a particular Balance in February 1673, and then the Stock of *Elias* appeared to be above 10000 l. and all the Particulars were agreed between them excepting only an Error of 35 l.

That the Books were kept by *Elias* from February 1662 till March 1667, who then made his Will in Writing (but no Executor) and thereby devised one third Part of his Estate to *Anne* his Wife, (the now Plaintiff) and the other two Thirds to his Children, (the other Plaintiffs) and soon after died in the House where his said Brother *Arnold Beak* then lived, leaving his Books of Account, and all other Papers concerning the Partnership, together

gether with his own private Estate in the said House, by which Means his Brother possessed the whole.

Afterwards the Plaintiffs desired, that the Books might be made up by an impartial Book-keeper, and not by *Samuel*, whom *Elias* in his Life-time did not approve; but *Samuel* was sent for from *Bordeaux*, and possessed himself of the Books, and entered what he would, and continued such Entries after *Elias's* Death, and took some Leaves out of the Books, and put others in, (as the Plaintiff suggested).

That 419 *l.* was left to the Infants (the Plaintiffs) by their Grandfather, which was put into the joint Stock about the Year 1656; but afterwards that Sum was, by an Order of the *Court of Orphans*, brought into the *Chamber of London*.

The Plaintiff also craved an Allowance and Benefit, in Proportion of a Composition of several Debts owing upon the joint Account in Trade, some being compounded at 10 *s.* others at 13 *s.* 4 *d.* in the Pound, and yet the Defendants would charge the Account with the full Debts.

The Defendant, *Arnold Beak*, denied all Abuses charged in the Bill, but says, that he was forced to compound with some of the Creditors, by Reason of great Losses, but promised to pay them, when able, in which he conceives the Plaintiffs are not concerned.

The other Defendants answer and disclaim.

It was admitted on all Sides, that an Account ought to be had of the Estate in Partnership; but the Question was about the Manner, (*viz.*) from what Time it should begin, and how long it should continue.

The Counsel for the Plaintiffs insisted on an Account stated in the Year 1662, and that it ought to proceed from that Time, without any Retrospect; and that the Stock of *Elias* might not be carried on in a pretended Partnership after his Death, but that it might be accounted as his separate Estate from that Time.

But on the other Side, the Counsel for the Defendant argued, that the Account of the the joint Trade ought to be carried on till all Accounts relating to the Partnership could be settled and made even.

Thereupon the Court decreed an Account, and that if the the Master find a Balance stated concerning the joint Trade, either in 1662, or in 1673, or at any other Time, then he is to take it from such Time; otherwise it must take its Rise from the Year 1648, when the Partnership first began, and must be carried on to the Death of *Elias*, but not afterwards; for the Plaintiff ought not to be concluded by any new or growing Account in Trade, but only is to have an Account of
what

what was then in Partnership, and the Proceed thereof, till it was got in.

And that from the Time as it could be distinguished what was the clear and certain Share of the Estate of *Elias*, it shall be taken and accounted for by the Defendants to be his separate Estate.

The Master shall allow the Plaintiffs their Proportion of the Benefit of the Composition, made by the Defendant with his Creditors for such Debts which concern the Partnership.

The Defendants to be examined upon *Interrogatories*, concerning any Abuses relating to the Account, &c.

Sir Thomas Bond, Knight and Baronet, Plaintiff.

Edward Eversfeild, Esq; Defendant.

Covenant to give the Purchaser collateral Security, there being a Power of Revocation in a Deed under which the Vendor claimed, which Power was not yet executed, &c.

THE Case, *ff.* The Bill was, to compel the Defendant *Eversfeild*, according to his *Covenant* in an Indenture and *Recognisance* of 8000 *l.* which he gave to the Plaintiff, who purchased the Manor of *Billingshurst* of the said *Eversfeild*, to settle Lands of the Value of 230 *l. per Annum* on him (the Plaintiff) and his Heirs, as a *collateral Security* for the quiet Enjoyment of the said Manor, against the Claim of all Persons whatsoever under the Defendant and *Mary* his Wife, which *Covenant* was to continue in Force 7 *Years* after the Death of *Eversfeild* the Covenantor; for that by the Deed under which the said *Eversfeild's* Title doth arise, there is a *Power of Revocation* left to the said *Mary*, which Power was not yet executed; therefore the Plaintiff desired to have a Conveyance from the Heir at Law of the said *Mary*, or Lands of 230 *l. per Annum* settled on him for a collateral Security.

The Court proposed, that the Defendant should procure the Heir at Law of *Mary*, to join with him in a Conveyance to the Plaintiff, which he should accept in lieu of the *Covenant* in the Indenture, and the *Recognisance* to be enlarged for 20 *Years* after the Defendant's Death.

But the Counsel for the Defendant not complying with this Proposal of the Court; for they insisted, that this *Covenant* for collateral Security was imposed on him by the Plaintiff, and was not insisted on when the Purchase was made,

Thereupon the Court left it to the Defendant to bring his Bill against the Heir at Law of his said Wife *Mary*, to compel him to join in a Conveyance; and then an Issue may be directed

directed whether the Defendant gave such Covenant for collateral Security, and whether *Mary* had made any Revocation or not, and the Defendant to search Precedents, whether the Court can enlarge the Time for giving collateral Security.

The Attorney General, on the Behalf of the Poor of the Parish of St. Margaret and Strowd in Rochester, Plaintiffs.

The Mayor and Citizens of Rochester, Defendants.

THIS Bill was, to have a Proportion of the *Charity* long since devised by the Will of *Richard Watts*.

Lands given
to the Poor
of the City

of *Rochester*; decreed that the Poor of the Liberties and Precincts of the said City shall have a Share.

¶ *Richard Watts* being seised in Fee of several Lands and Messuages in *Kent* and *London*, and elsewhere, and possessed of a great personal Estate, did, by Will dated in *August* 1579, devise to *Marian* his Wife 100 Marks, and the Use of all his Chattels real and personal, and all his Lands and Tenements during her Widowhood, and after her Death he devised his principal House called *Satis*, and the House adjoining, situate on *Bully Hill* in *Rochester*, &c. and all his Leases to be sold by the Mayor and principal Citizens of *Rochester* (in the Will named) and out of the Money arising by such Sale to pay 100*l.* to his Brother *Edward Watts's* Children, and that a Stock of Money should be made of the Residue, and put out by the Mayor, &c. at Interest, which Interest and Profits of the Money should be bestowed in Rebuilding an *Alms-house* within the said City, and other charitable Uses in the Bill, &c.

And he devised all his Lands and Tenements (except his Messuage called *Satis*, and except what was before devised for Rebuilding an *Alms-house*, &c.) to the said Mayor, &c. and his Successors for ever, the yearly Profits to be for Rebuilding an *Alms-house*, as aforesaid, and to provide *Flax*, *Hemp*, *Yarn*, and other Materials to set the Poor of the said City to work, and for the farther Relief of the Poor and Impotent, as the Laws of this Realm do permit, and made *Marian* his Wife Executrix, and died.

This Will
was defective.

After whose Death *Marian* entered, and sold the Goods and Leases appointed to be sold, and employed the Money according

C c

to

* This Deed
was the
Foundation
of the Cha-
rity.

to the Will, and 8 Years afterwards she married *Thomas Pagett*, so that her Estate in the said Lands (being only for her Widowhood) was determined; and then the *Mayor* and Citizens entered and received the Rents and Profits ever since, but have provided necessary Materials to set only the Poor of the Parish of *St. Nicholas* to work, and relieve them, without any Regard to the Poor of *St. Margaret's and Stowd*, pretending that they claim by a Purchase from *Pagett and his Wife* by an *Indenture quadripartite, dated 26 April 35 Eliz.* made between the said *Pagett* and his *Wife* of the first Part, the *Mayor* and Citizens, &c. of the second Part, the *Dean and Chapter of Rochester* of the third Part, and the *Warden, &c. of Rochester Bridge* of the fourth Part; by which the *Poor of the said City, and the Liberties and Precincts* thereof, are provided for, but that the Parishes of *St. Margaret and Stowd* are not within the said *Liberties and Precincts*, and consequently not capable to partake of the *Charity*; which being now improved from 36 *l.* 16 *s.* 8 *d.* (as it was at the Time of the Will) to 300 *l.* per Annum, and upon an Expiration of a Lease of 99 Years of Lands in *Chatbam*, which will expire about 24 Years hence, there will be an Addition of 400 *l.* per Annum more.

Therefore this Bill prays a Discovery of the Stock in the Hands of the *Mayor*, and that the *Poor of St. Margaret's*, and great Part of *Stowd* which are within the City, and so were at the Time of the Will, may have a proportionable Share of the present and future Profits of this Charity.

It was insisted by the Counsel for the Defendants, that tho' *St. Margaret's and Part of Stowd* were admitted to be within the *City of Rochester* at this Time, yet by the Will the Poor of the *ancient City* were intended to be relieved, and not the Poor of that Part which hath been since added to the City, and enlarged by Charter, and that the quadripartite Indenture doth not mention the Poor of *St. Margaret's* or *Stowd*, but the Poor of the *Liberties and Precincts of the City, that is, of the ancient City, and not of the City newly enlarged*; neither was this *Charity* ever demanded by the Poor of *St. Margaret and Stowd*, till of late.

To which it was answered by the Counsel for the Plaintiff, that the Rents being a great while but 36 *l.* 16 8 *d.* per Annum, and not more, till about six Years last past, it was not worth their Contest, and that the Will of *Watts* had been formerly examined in this Court, and found defective, so that it was the quadripartite Deed which was the Foundation of this Charity; which being admitted,

The Court declared, that so much of *St. Margaret's and Stowd*, which are within the *Precincts and Liberties* of the City, tho' not expressly named in the *quadripartite Indenture*, shall

shall be comprehended under the Words *Precincts and Liberties*; and that the Poor thereof shall have a Share of the *Charity*, according to the present Revenue and future Improvement thereof; and decreed the same for ever, and referred it to certain Persons to set out the Shares and Proportions.

And that the *Mayor of Rochester, &c.* for ever hereafter account yearly before the *Warden and Company of Rochester Bridge*, as directed by the *quadripartite Deed* for all the yearly Revenues, Improvements, Receipts, Payments, and other Things concerning the Charity.

James Hickson *and others, Plaintiffs.*

Elizabeth Witham, William Witham, John, Charles, Thomas Witham, James Orbell, *and* John Skin, *Defendants.*

THE Case, *J. Clement Witham* being in his Life-time indebted to the Plaintiffs in several Sums of Money, and being seised in Fee of several Messuages and Lands of great Value, did by *Indenture* dated 8 Decemb. 1672, and made between him of the one Part, and the Defendants *Orbell and Skin* of the other Part, declare his Intention to raise Portions for his Children, and to pay his Debts, and thereby settled his Lands on the said *Orbell and Skin, in Trust* to sell the same to make Provision for his Wife, and to raise Portions for his Children, and with the Money arising by such Sale to pay to his Wife *Elizabeth Witham* 800 l. and to *William Witham* 800 l. and to the Rest of his younger Children 400 l. apiece, and one third Part of the Remainder of his Estate he gave to the said *Elizabeth*, another third Part to *William*, and the other third Part to and amongst his younger Children equally between them, and made the said *Orbell and Skin* *Executors of his * Will*, to the Uses aforesaid, and signed, sealed, *published and declared this to be his last Will* in the Presence of several Witnesses, and soon after he died.

A Writing purporting an Indenture, but declared by the Party to be his last Will, and by which he gave several Legacies, and made two Executors, was decreed to be a good Will.

* Formalities which are made essential by Law to the very Being

of a Will, cannot be dispensed withal in Equity; but the Law hath not prescribed in what Form of Words the Instrument itself, purporting a Will, shall be made. Therefore any Writing, by which the Intention of the Party appears to give or dispose any Thing, and having all the Formalities required by Law, as Witnesses signing and sealing, &c. shall amount to a Will. *Dom. 2 Vol. 18.*

Orbell and Skinn renounce and refuse to meddle with the Estate; thereupon *Elizabeth* the Widow took out Administration

with the Will annexed, and by Virtue thereof possessed her self of the Estate.

And the Creditors having exhibited a Bill against her to have an Account of the Profits, and that the Estate might be sold, and the Money applied to pay them as the Testator had directed;

Elizabeth said, that besides the Portion of 800 *l.* given to her she is *intitled to her Dowry*, and the Counsel for the Children insist, that the Premises are vested in *Orbell* and *Skin* in Trust to sell and raise Portions for them, and claim the Benefit thereof, and that there is no Direction for Payment of Money to the Creditors, nor any Trust raised for them.

And *Orbell* and *Skin* renounce, but say they are ready to execute the Trust as the Court shall direct, being indemnified, and having their Charges allowed; and they claim the Benefit of this *Will or Writing*, with the other Creditors, for such Debts which they insist are due to them.

The Court declared this *Instrument in Writing* to be a good *Will*, and that *Orbell* and *Skin*, the Executors therein named, have an Estate in Trust for Payment of Debts of *Clement Witham* deceased, and that this Writing establishes a Trust in them for that Purpose, and decreed the same accordingly; and that they execute the said Trust, and sell the Lands appointed to be sold for the Payment of the said Debts; and that *Elizabeth* account for the Rents and Profits received by her since the Death of her Husband, and that the same, and the Money arising by Sale of the said Lands, be applied in the first Place to pay the Debts of the Creditors, who are to prove such Debts before the Master within six Months, and contribute towards the Charge the Plaintiffs have been at in Relation to the Trust, or else they shall be concluded.

That the Debts upon Bonds shall have no Preference to Debts upon simple Contract, but must be paid equally; and that after Debts paid the Surplus shall go to pay Legacies; and if any Thing remains after Legacies paid, the same shall be distributed between *Elizabeth* and her Children; and that if the Money raised by Sale, &c. should not be sufficient, then the Creditors to be paid in Proportion, as far as the same will extend.

The Counsel for the Defendants prayed Time to shew Precedents, this Decree being, that Debts by Bond or by simple Contract, which do not charge the Lands, shall be paid otherwise than this Deed or Will directs, by which the Trust was created, and whether, as this Case is, the Plaintiffs ought to be let for their Debts before the Defendants.

And Time being given for that Purpose till next *Easter* Term and no Precedents being then produced, the Court confirmed the Decree, with this farther Order, that the Trustees shall have their Charges

Charges they shall be put unto in executing the Trust, and to be protected, &c.

The Lady Katharine Jacob, Widow, Plaintiff.

John Thasker, Gent. Defendant.

SIR *John Jacob*, in Consideration of the Marriage of *Katharine* the now Plaintiff, with Sir *John Jacob* the Son, and of 4000 *l.* paid as her Portion, they the said Father and Son, and one *Robert Jacob*, did, by Indenture dated 26 April 1664, settle the Manor of *Stansted*, and other Lands in the Bill mentioned of the yearly Value of 500 *l.* on the Son for Life, and after his Decease on the said *Katharine* for her Life for her Jointure, and covenanted that all the Premises were worth 600 *l. per Annum*.

After the Death of the Husband, one *William Harborne* and *Mary* his Wife, as Executrix of *David Marshal*, having obtained a Judgment against Sir *John Jacob* the Father, he the said *Harborne*, in the Year 1664, died, having made another *William Harborne* and *Nicholas Marshall* his Executors, which said *Nicholas* agreed with one *Collett*, that he should have the Benefit of the said Judgment, but in Trust for one *Bradborne*.

Afterwards, in the Year 1665, a *Scire facias* was brought by the said *William Harborne* and *Nicholas Marshal* to revive this Judgment, and an *Elegit* sued forth in *Trinity-Term* in that Year, and all the Jointure-Lands, upon an Inquisition taken, were delivered in Execution at 100 *l. per Annum*, and the Moiety extended, and the Rest of Sir *John Jacob's* Lands were sold.

In *Mich. Term* following, *Edward Jevon*, as Lessee of *Harborn* and *Marshal*, brought an Ejectment, and recovered the Possession; and in *April* following the said *Marshal*, *Collett*, *Bradborne* and *Jevon*, by the Consent of Sir *John Jacob*, assigned this Judgment and Extent to one *Waddington*, in Trust for * *John Thasker* the now Defendant, and in Consideration of 400 *l.* which he agreed to pay (at the Request of Sir *John Jacob*, to *Bradborne* and *Collett*, who had an Interest in the said Judgment; and that accordingly 250 *l.* was paid to *Bradborne*, and 250 *l.* to *Collett*.

* Who had Notice of the Jointure before he brought this Judgment.

The Defendant *John Thasker*, lent Sir *John* the Son several Sums of Money, in Consideration whereof he granted to the Defendant a Lease of the Premises, (now extended) and other his Lands in *Essex* for 21 Years, to commence from 26 March

1669

1669, and gave him a Judgment for 800 l. for better securing the Payment of the said Debts.

In May 1670, the Tenants attorned to the Defendant *Thasker*, who had the Possession by Virtue of his Lease; and it was agreed between the Defendant and Sir *John Jacob*, that the Rents and Profits should be applied by the Defendant towards Satisfaction of the Money, for which the Lease and this *second Judgment* were given.

In June 1673 it appeared, upon an Account then taken, that the Defendant had then received 199 l. and more towards the Money secured by the said Lease and second Judgment, which Account was allowed and signed by Sir *John Jacob*.

And the Defendant afterwards pretended, that he ought not to account but from that Time, and that all the Rents which he received before that Time were due to him; since which he hath received only 100 l. more than his necessary Disbursements.

It appearing to the Court, that the Defendant *Thasker* had Notice what Lands were settled on the Plaintiff in Jointure, (who now brought her Bill to discover Incumbrances, and to clear the same) and that he had such Notice before he purchased the Assignment of the Judgment, and that he entered on the extended Lands by Virtue of *Harborne's Judgment*, and the Assignment thereof, and the Extent in 1670, and that the Tenants attorned to him upon that Account; therefore he ought to receive the Profits of the extended Premises under that Security, till the 400 l. with Interest and Costs, are paid.

But that the Lease and the second Judgment, and any Agreement made between the Defendant and Sir *John Jacob*, or any other Person, ought not to prejudice the Plaintiff's Jointure; and that the Rents and Profits of the extended Premises ought not to be applied to any other Account than the Satisfaction of the said 400 l. and that the intrinsic yearly Value of all the Premises, since the Defendant entered, in May 1670, ought in the first Place to be applied towards the Satisfaction of the said 400 l. and Interest and Costs, and that if the same is not sufficient, then the Jointress must make it good.

But if it shall be more than sufficient, then for so much thereof as hath been received since the Death of Sir *John Jacob* the Son, the Defendant shall be accountable, and pay it to the Plaintiff at such Time and Place as the Master shall appoint, all which was decreed accordingly.

And an Injunction awarded to stay Waste.

Ayray and others, Plaintiffs.

Bellingham and others, Defendants.

THE Plaintiffs were *customary Tenants* of the Manor of *S. H.* and seised of several *Copyhold Lands of Inheritance* held of the said Manor, descendible from Ancestor to Heir, and that by the Custom thereof they are to enjoy the *Timber-Trees and Wood*, standing and growing upon their respective Copyhold Lands, without Control of the *Lord of the Manor*, but that the Defendant *Bellingham* hath sold, cut and disposed the Woods and Trees growing on the Lands of the Plaintiffs to the other Defendants, who have cut down and destroyed the same.

Commission directed to several Persons, to set out sufficient Timber and Wood for the Copyholders of a Manor, who claim it by Virtue of a Custom.

The Defendant claimed the Right of the *Timber-Trees as Lord of the Manor*, and that the Tenants had only the Privilege to cut the old and decayed Wood for *Fuel* for their necessary Use, and not other Wood than for necessary Repairs, and that not without *License of the Lord* of the Manor.

The Court directed, that a Commission issue to certain Commissioners in the Country, to be named by the Six Clerk, &c. if the Parties cannot agree to set out sufficient Timber and other Wood upon the Premises, for all Manner of *Boots and Estovers*, according to the Custom used within the said Manor, and that the Plaintiffs, their Heirs and Assigns have Liberty to take and use the same according to their respective Interests, and the Commissioners are to see sufficient set out, and to be left standing and growing on the Premises both for present and future Time, and that the Defendants are not to meddle with what shall be set forth; and that the Residue of Timber and Wood, after such setting forth, shall be to the Lord of the Manor and his Heirs.

Martha

Martha Corcellis, *Widow, and James and Richard Corcellis Infants, by the said Martha their Guardian, Plaintiffs.*

John Corcellis, *Gent. Defendant.*

Bill to be
relieved a-
gainst an
Action
brought by
a Guardian
for detaining
Infants, and
to have an

THIS Bill was brought by the Plaintiffs to be relieved against an Action brought against them by the now Defendant, for detaining the *Infants* from him who is their *Guardian*, and to have an Account of the real and personal Estate of *Nicholas Corcellis* their late Father, and Husband of the Plaintiff *Martha*.

Account of the Rents and Profits of the real Estate; the Defendant pleads, that the Guardianship was devised to him; and that he is the Remainder Man in Tail, if the Infant should die without Issue. The Plea was allowed.

The Defendant *John Corcellis*, as to so much of the Bill which concerns his Proceeding at Law against the now Plaintiff for detaining the Infants from him, and demanding an Account of the Rents and Profits of the Lands, &c. and of the Deeds and Writings in his Custody relating to the same, and an Account of the personal Estate of the said *Nicholas Corcellis*,

He pleads, that the said *Nicholas Corcellis* did, by his last Will, devise to the Plaintiff *Richard Corcellis*, (his Son) and to the Heirs of his Body, &c. all his Lands, &c. and that if he should happen to die before the Age of 21, or at any Time after, without Issue of his Body, then to this *Defendant* and his Heirs; and that he devised the *Guardianship* of his said Son, and the Management of his Estate to this Defendant, and after other Legacies, he gave 10 s. to the Plaintiff *Martha*, to bar her from all other Claims of his personal Estate, and made this Defendant *Executor*.

The Court allowed the *Plea*, but that the Plaintiff be at Liberty to reply, and to proceed to a Hearing, the Court declaring, that if upon the Hearing the Will should be disproved or set aside, the Defendant should perfect his Answer upon *Interrogatories*; and Costs in the mean Time were spared.

The

The Earl of Bath, Plaintiff.

Sir Eliab Harvey, Defendant.

TH E Defendant's Father being seised in Fee of several Ma-
nors and Lands in the *West of England*, great Part thereof
was for many Descents in the *Ancestors* of the Plaintiff; and the
present *Earl* being desirous to restore the same to his Family, did
for that Purpose employ one *R. Yarway*, to contract with the
Defendant's Father for the same, and to take up Money for the
Purchase thereof; and accordingly the said *Yarway* borrowed of
Sir *R. Coningsby* a considerable Sum of Money at Interest; and
about *February* 1660, he contracted with the Father of the De-
fendant for the absolute Purchase of the said *Manors* and Pre-
mises, and Articles were executed between them, that upon *Yar-*
way's Payment of 3200*l.* to the Father of the Defendant, he and
his Heirs should convey the Premises to the said *Yarway* and his
Heirs, or to such other Person and his Heirs as *Yarway* should
appoint.

Contract
made by an
Agent for
the Pur-
chaser, which
Agent died
before the
Purchase was
completed,
and the Ven-
dor likewise
died, but his
Heir was de-
creed to ex-
ecute a Con-
veyance.

Afterwards the Father of the Defendant died, and he the
said *Yarway* having paid to him in his Life Time, and to the
Defendant himself since the Death of his said Father the Sum of
2000*l.* which said Sum was Part of the Money which was bor-
rowed as aforesaid; and deposited in the Hands of the said *Yar-*
way, by Sir *H. Coningsby*, for the Use of the Plaintiff, and
which hath been since repaid to him by the Plaintiff.

After the Articles were executed as aforesaid, and after Pay-
ment of the said 2000*l.* *Yarway* entered into other Articles with
the Plaintiff, dated in *July* 1664, by which he covenanted with
the Plaintiff to procure the Defendant Sir *Eliab Harvey*, to
convey the Premises to the Plaintiff, and his Heirs, but before
such Conveyance was made, he the said *Yarway* died indebted
many thousand Pounds more than he was worth.

After whose Death *Thomas Coningsby*, Esq; administers as
principal Creditor; and thereupon the Plaintiff applied himself
to him, and to Sir *H. Coningsby*, to procure the Defendant Sir
Eliab Harvey, to execute such Conveyance as aforesaid, ac-
cording as *Yarway* had by Articles with the Plaintiff agreed to
do; and thereupon both the *Coningsbys* did acknowledge, that
the 2000*l.* was paid, and Sir *Henry Coningsby* promised, that up-
on Payment of the Residue of the Purchase-money to the Defen-
dant Sir *Eliab Harvey*, he would procure him to convey the
Premises to the Plaintiff, before the End of *Trinity-Term* ensu-
ing; and *Tho. Coningsby* by a Writing under his Hand, dated
15 *July* 1688, declared that the 2000*l.* paid by *Yarway*, to the

D d

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Harveys was the proper Money of Sir *Henry Coningsby*, and actually repaid to him by the Plaintiff; and that *Yarway's* Contract was made on the Plaintiff's behalf.

* The Defendant in this Case was Heir at Law; now by the Civil Law, the Validity of a Disposition by which an Heir is charged, is, that it be made by a

Person who hath Power to dispose, and in whom such Power doth not meet with any Obstacle by his being under any Incapacity, *Dom. 1. Vol. 597.*

And it appearing that *Yarway* did not pay all the 2000*l.* at once, but at several Times, and that Sir *Eliab Harvey* sued him for the same; and that the Plaintiff had now procured the Tenants to attorn to him, and had received the Rents; the * Defendant did offer that upon Payment of the remaining Part of the 3200*l.* and Interest and Costs in the several Suits aforesaid, and in this Suit, he would convey the Premises according to the original Articles made between his Father and the said *Yarway*, with Warranty and Covenants therein contained; and to be indemnified from *Yarway's* Heirs, and from the *Coningsbys*, and from all Costs he shall be put to, until a perfect Release or Conveyance shall be procured from them.

All which was decreed accordingly.

William Galle *Administrator of John Gourney,*
Plaintiff.

Thomas Greenhill, *Defendant.*

Administra-
tor of an
Executor,
who was like-
wise a Lega-
tee by the
Will of the
Testator, ex-
hibited his Bill,

THE Plaintiff as *Administrator of John Gourney*, exhibited his Bill against *Greenhill* the Defendant, to have an Account of the Estate of his Father *Henry Greenbill*, to whom the said *John Gourney* and one *John Greenbill* were Executors, and the said *Gourney* was likewise a Legatee.

to which the Defendant demurred for want of proper Parties.

The Defendant *Tho. Greenbill* demurred, for that his Brothers *George* and *Henry Greenbill* who are Legatees by the said Will, and are charged by the Plaintiff to combine with this Defendant, are not made Parties to this Bill.

The Court allowed the Demurrer with the ordinary Costs of five Marks.

John Hole, *Plaintiff*.

Christopher Harrison, *Defendant*.

And

Christopher Harrison, *Plaintiff*.

John Hole, *Sir* Thomas Player, Thomas Gilpin,
Robert Jones, Thomas Tayler, and Anne his
Wife, *Defendants*.

THE Bill of *Hole* was a *Certiorari* Bill; the Case, *ff.* the Defendant *Robert Jones*, who was one of the Executors of *Tho. Diamond*, being to give Security to the Chamber of London, to pay 195 *l.* for the Use of *Geo. Diamond an Orphan*, and Son of the said *Thomas*, did procure the Plaintiff *John Hole*, together with one *Hutchins* and the Defendant *Harrison*, to be bound with him as Sureties to *Sir Tho. Player, the Chamberlain of London, in a Recognisance dated 20 April, 17 Car. 2.* for the Payment of the said 195 *l.* to the said *George Diamond*, at his Age of *twenty-one Years*, or Marriage; and if he died before, &c. then to pay the same to whom it should belong; and the said *Jones* gave *Harrison* a Counterbond to save him harmless.

George Diamond died before *twenty-one*, or Marriage, and then this Money became payable to the said *Rob. Jones*, and to two other Persons who were Executors of the said *Tho. Diamond*.

Harrison, who was bound in the said Recognisance with *Hole*, prevailed with the *Chamberlain* to sue *Hole*, pretending that the Money, upon the Death of the Infant, was payable to the Defendant *Gilpin*; and thereupon the *Chamberlain* proceeded, and got Judgment, which *Jones* would have prevented, if he had been at Liberty, but he was arrested by *Harrison* on the said Counterbond, who got Judgment, and took his Body in Execution; and yet the said *Harrison* brought a Bill in the *Lord Mayor's Court*, to have a Moiety of the Money payable on the Recognisance, alledging that *Hutchins* was dead, and that the *Chamberlain* had taken him the said *Harrison* in Execution upon the Recognisance, and that he had paid the Money; thereupon *Hole* exhibited his Bill, and prayed to have the Proceedings there to be removed into this Court, and that he might be relieved.

Harrison by his *Cross* Bill prays, that since he had paid 260*l.* to satisfy the Judgment obtained against him upon the said *Recognition*, and that *Jones* was dead insolvent, that he may be paid by *Hole*, a Moiety of the said 260*l.* with Damages and Costs; which was decreed accordingly.

And it appearing that the 195*l.* did not belong to *Gilpin*, to whom it was paid, but to the said *Jones*, and other the Executors of *Tho. Diamond*; therefore upon *Hole*'s paying a Moiety of the said 260*l.* to *Harrison*, it was now ordered, that he shall assign the said Decree, and the Benefit thereof to *Hole*, with Authority to prosecute *Gilpin*, to enforce him to pay what *Hole* had paid to *Harrison* with Interest and Costs; and *Hole* to indemnify *Harrison* against *Gilpin*, by prosecuting him in *Harrison*'s Name.

Huddleston, *Plaintiff*.

Asbugg, *Defendant*.

Bill to be
relieved a-
gainst a
Judgment
irregularly
obtained;
the Defendant

THIS Bill was, to be relieved against a Bond entered into by the Plaintiff's Father, and Judgment thereon obtained against the Plaintiff, who was his Heir at Law, suggesting that the same was long since satisfied, and irregularly obtained.

The Defendant pleaded the said Judgment, and likewise demurred, for that if the Judgment was irregularly obtained as suggested in the Bill, 'tis examinable only in that Court where it was obtained, and not in this Court.

The Court allowed both the Plea and Demurrer.

Sibill Holland, *Widow, Plaintiff*.

Sir Thomas Bludworth, and Henry Parker,
Defendants.

Lands were
conveyed
to the De-
fendant, be-
ing a Mem-
ber of Par-
liament, on
purpose to

THIS Bill was, to discover the Title of Sir *Tho. Bludworth* to the Lands now in Question, in regard he claims by a Conveyance from the other Defendant *Henry Parker*, or one *John Sicklemore* in Trust for him; and which Conveyance was made

made to him, being a *Member of Parliament*, on purpose to hinder the Proceedings at Law by his *Privilege*.

To which Sir *Tho. Bludworth* by Plea says, the Defendant *Parker* did mortgage the Premises to him, to secure the Payment of a considerable Sum of Money not yet paid; and so discovers nothing of which the Plaintiff had prayed a Discovery as to his Estate, Title, or Interest, in the Premises.

But the Court over-ruled the Plea, and ordered him to answer the Bill.

John Hellam, *Plaintiff*.

John Grave and others, *Defendants*.

THE Case, *ff.* the Plaintiff by his Bill makes a Title to the Lands therein mentioned, as Heir to his Father, which he conveyed to the other Defendant *Ward*, and gave him collateral Security, but that the Defendant *Grave* now pretends a Title to the Premises from the Plaintiff's Father, by a *Release*, or some Conveyance of the same, and of which a Discovery is now prayed. Bill to discover a Title and Deed; the Defendant pleads a Conveyance from the Plaintiff himself, and demurs as to a Verdict at Law obtained against the Plaintiff's Title upon a full Evidence, and the Discovery of the Purchase-Deed.

The Defendant *Grave* by his *Plea* sets forth the Date of the Deed, and that the Plaintiff himself did thereby for a valuable Consideration convey the Premises to his Father, who conveyed the same to this Defendant; and then he sets forth a Verdict obtained upon full Evidence, upon the said Title against the now Plaintiff's Title, and pleads the same in Bar thereof, and of all other Demands in the Bill.

And as to the Discovery of the Deed of *Release*, he demurs, it being the Plaintiff's own Act which will serve only to give him and the other Defendant *Ward*, an Advantage to impeach the same if there should be any Defect in the Body of the Deed, or in Form of executing thereof; and to discover the Names and Habitations of the Witnesses, would be to give the Plaintiff and the other Defendant *Ward*, an Opportunity of tampering with them, in order to stifle their Evidence.

The Court allowed both the Plea and Demurrer.

Termino Paschæ.

27 Car. 2. 1675.

Cornelius Degelder, *Plaintiff.*

William Depeister, *Merchant, and* Susan Monday, *Widow of Edward Monday, Defendants.*

Contract about the Sale of a Ship, in which there was a Mistake by the Negligence of the Writer, was rectified by a Decree.

E. Ball being Captain of a Ship called the *Success of London*, and then living at *Woodbridge in Suffolk*, and having employed *Edward Monday* the Defendant's Husband to build that Ship for him, became thereby indebted to the said *Monday* in several hundred Pounds, who pressing Payment thereof, the said *Ball* applyed himself to the Plaintiff to lend him 200*l.* proposing for his Security a Bill of Sale of the said Ship, with a Condition of Redemption upon the Payment of the Principal and Interest, affirming there was no Pre-engagement, and that this was the first Bill of Sale.

This Writing was to be sealed at the *Notary's Office*, where *Monday* was to make a *Bill of Sale of the Ship to Ball*, thereby to enable him to make another *Bill of Sale* thereof to the Plaintiff to be sealed at that Time, the one immediately after the other, at which Time *Monday* importuned the Plaintiff to lend him 200*l.* more, and agreed that the Plaintiff should have the first Bill of Sale.

The *Notary* prepared an absolute Bill of Sale from *Monday* to *Ball*, and another from *Ball*, to the Plaintiff, and a Defeasance by it self in another Paper with a Clause of Redemption, respecting both the Bills of Sale; but at *Ball's* Request, the Condition of Redemption was afterwards inserted in the Bill of Sale it self to the Plaintiff, (being writ over again, (*viz.*) to be void upon Payment of 400*l.* to the Plaintiff, and the *Premium* then agreed on.

But by the Negligence of the Notary, instead of *Monday's* making a Bill of Sale to *Ball*, he made a Bill to *Monday* to secure the Payment of 400*l.* and this was dated before his Bill to the Plaintiff, so that thereby *Monday* had the 400*l.* and the Ship likewise in Possession; and the Plaintiff had only a Bond of 800*l.*

for his Security, which was given to him by *Ball*, and dated 24 *January* 1670, conditioned to pay 440*l.* as therein mentioned; and 13*l.* 6*s.* 8*d.* Allowance for every Month after the last Day of *January*, not exceeding six Months; and upon these Terms the (Plaintiff supposing he had the first Bill of Sale,) did at *Ball's* Request advance 200*l.* more.

Afterwards *Monday* affirming, that *Ball* made a Bill of Sale to him on the same Day that he made another to the Plaintiff, and the said *Monday* being indebted to the Defendant *Depeister*, made a Bill of Sale of the Ship to him, conditioned on Payment of a greater Sum than was due to him from *Ball*.

Depeister knowing what Money the Plaintiff had advanced, and that by the Agreement he (the Plaintiff) was to have the first Bill of Sale, they both agreed to go to *Woodbridge*, and arrest the Ship; and that the Charges of the Journey should be first paid, and afterwards the Plaintiff's Debt by the Money arising by Sale of the Ship.

Accordingly the Plaintiff at his own Charge took out an *Admiralty* Process, and then *Monday* agreed to sell his Bill of Sale to the Plaintiff, for which he was to pay 100*l.* in six Months, and 40*l.* at the Sale of the Ship, or her Arrival at *London*; but after this Agreement, *Depeister* (without the Consent of the Plaintiff,) got *Monday* to assign his Bill of Sale to him, contrary to the aforesaid Agreement, and refuses to let the Plaintiff have any Benefit thereof, tho' he offered to pay *Depeister* a Moiety of what he paid to *Monday*.

The Defendant *Depeister* pretends that he did not know of any Precedent Bill of Sale, but that *Monday* owed him 290*l.* and owns that he agreed to treat with *Monday*, in Conjunction with the Plaintiff, but that they could not adjust the Terms; thereupon he treated singly with him, and paid him 193*l.* for his Interest in the *Bill of Sale*, and that he is now possessed of the said Ship, and hath laid out 44*l.* 10*s.* in *Calking*, *Pitching*, and *Oaker*, and other Sums, in all amounting to 563*l.* which he expects with his Damages, and Costs of the Assignment, Letter of Attorney, and 60*l.* spent in the Court of Admiralty; otherwise that the Plaintiff be excluded, since he (this Defendant) purchased a prior Title to secure his own.

The Court decreed, that the Charges of preserving the Ship, shall be deducted and paid in the first Place, out of and by the Money for which she shall be sold.

And afterwards the Residue of the Money arising by such Sale, (*viz.*) 400*l.* Part thereof shall be paid to the Plaintiff, the same being due to him by the Bill of Sale of *Ball*, together with the *Premium*, and other Incidents in manner following.

ff. That 193 *l.* be paid to *Depeister* for the Purchase of *Monday's* Interest, and 290 *l.* lent by him the said *Depeister* to *Ball*, on a quarter Part of the said Ship.

The Overplus to go to satisfy the 200 *l.* which the Plaintiff lent to *Ball*, so far as it will extend.

And that if the Executors have any Assets, the same shall be applied towards the Payment of the 100 *l.* to the Plaintiff, which he lent to *Monday*, or so much thereof as shall remain unpaid.

And the Master may have a Commission to examine Witnesses, &c.

William Gough, *Plaintiff*.

George Stedman, *Defendant*.

Plea of a
Purchase for
a valuable
Consideration
allowed.

THE Case, ff. one *Kingston* being seised of Lands held by *Copy of Court-Roll of the Manor of Stratton in the Fosse in Somersetshire* for three Lives, and of certain *Coal-Mines* called the *Holmes or Gozet*, Parcel of the said Manor did by Indenture, dated 9 *June* 1664, in Consideration of 25 *l.* paid to him by the Plaintiff *Gough*, and of 100 *l.* per *Ann.* to be paid to him during his Life, grant all his Estate and Interest therein, (being two Parts in three) to the Plaintiff; and that the Defendant *Stedman*, by certain Articles made between him and *Kingston*, was to have the other *third Part*; but he pretended to have a Grant of the whole before the Conveyance made to *Gough* the Plaintiff, and had Possession of the whole, though he was entitled but to *one Part* in three.

The Defendant disclaimed as to Part called the *Barrow*, and as to the other he pleads, that 4 *May* 1664, he for a valuable Consideration purchased *two Parts* of the Premises which the Plaintiff now claimed, and had a Conveyance thereof executed to him accordingly, which he quietly enjoyed and worked in the Mines till they were filled with Water; and that his Title ought not to be now impeached, the rather for that without his Stock, which was 1000 *l.* the Place (being worth little when he purchased it,) could not be worked for Coal, and that he had no Notice of the Plaintiff's Pretence when he purchased, &c.

The Court allowed the Plea, and dismissed the Bill.

John Evans *by Bill of Review, Plaintiff.*

William Canning, *Son and Administrator of Richard Canning, Defendant.*

THIS Case was upon a Bill of Review, and upon the Defendant's *Plea and Demurrer.*

ff. By a former Decree in *Trinity-Term* 1688, *Richard Canning* the Defendant's Father and Intestate, being Plaintiff in that Cause against *Wm. Canning* and the now Plaintiff *Evans*, in which Cause the said *Rich. Canning* set forth, that the Ancestors of *Phillippa* his Wife, for above one hundred Years past, had been possessed of Leases of the Tithes of the Lands in that Bill mentioned, held of *Christ-Church College in Oxford*, which came to his said Wife, and was by him and her surrendered; and that *Dr. Reynolds then Dean, and the Canons of Christ-Church*, did in the Year 1649, grant the Premises to them for 21 Years.

That the said *Richard* received the Profits thereof for 4 or 5 Years, but being indebted to his Brother *Wm. Canning*, he deposited the Lease with him for his Security; and he by a Writing acknowledged the Receipt, and promised on Payment to deliver it up uncanceled.

This *Depositum* is properly a Pawn, which Word in the Civil Law is indifferently used, and in the same Sense with the Word *Mortgage*, the one being applyed to moveable Things which are put into the Possession of the Creditor to secure some Engagement, and the other signifies the Right acquired by a Creditor upon immoveables appropriated to him by his Debtor, though he is not put into the immediate Possession thereof. *Dom. 1. Vol. 347.*

In the mean time *Richard* endeavoured to sell his Interest, and *William* was willing to Purchase Part of the Premises, but would have a new Lease from the *College*, and no Assignment from *Richard*; and thereupon the old Lease was surrendered; and by Agreement the Tithes were to be proportioned between three Persons, (*viz.*) between *Richard*, *William*, and one *Street* another Creditor of *Richard*, and accordingly *Dr. Owen, and the Canons* by their several Indentures, dated 27 Feb. 1653, demised the said Tithes in several Proportions, (*viz.*) one third Part to *Wm. Canning*, another to *Street*, and the third to *Richard* and his Wife for 21 Years, they to pay a Moiety of the whole Rent, and accordingly they severally entered and enjoyed their Parts.

But *Wm. Canning* and the said *Street*, the two Creditors of *Richard*, under a Pretence to have Accounts settled, got *Richard's* Lease into their Hands, and afterwards *Richard* sold the Tithes of *O.* being Part of his Proportion, and then assigned his Lease to his Brother *William*, in Trust to account and to pay what was

E e

due

Bill of Review; the Defendant pleads the former Decree signed and inrolled, and that there are no Errors in that Decree.

* A Lease deposited in the Hands of another to secure the Payment of Money borrowed.

due to him, and upon Payment thereof, the said Assignment was to be delivered up to *Richard* to be cancelled.

But all these Tithes being formerly the Estate of the *Marquess of Worcester*, who was dispossessed in the Rebellion, and not suffered to renew; afterwards when the King was restored, the Leases granted by *Dr. Owen* were made void.

And it was by Act of Parliament provided, that the Executors or Administrators of the said *Marquess*, might grant new Leases for so long Time as the *College* might by Law grant Leases, allowing the Tenants what they had paid for *Fines*, and they discounting for the Mesne Profits.

Pursuant to that Act, the *College* made a Lease to one *Cratford*, in Trust for the *Marquess* who entered and enjoyed these Tithes, and received the Rent for three Years together; and then proposed to sell his Interest to *Richard* and *William* for 500 *l.* and 100 *l.* the Fine, which he had paid to the *College*, and 216 *l.* Arrears of Rent with Interest, for the two last mentioned Sums, to all which *Richard* agreed, but being prevented by Sickness, he entrusted his Brother *William* to raise Money to pay the *Marquess*, who dealing with the Plaintiff *Evans*, did accordingly pay the *Marquess*, and took a Conveyance from him and *Cratford* of all their Right, &c. whereupon they entered and received the Profits.

And *William*, pretending that the Assignment which *Richard* had made to him was real, prevailed with the *College* to take in the *Marquess's* Lease, and to make a new Lease to him of all the Premises, and by that means to defraud *Richard*, who thereupon prayed a Discovery of the Title, and an Account of the Profits.

William denied the Trust, and *Evans* confessed that a new Lease of the Premises was mortgaged to him by *William*, to secure the Repayment 1100 *l.* at the End of the two Years with Interest half yearly, which was borrowed of him to pay the *Marquess*, and the Arrears due to the *College*, and for renewing the Lease; and that when he lent the Money, he had no Notice of *Richard's* Claim, yet upon Payment, &c. he would reassign as the Court should direct.

The Decree in this Cause was, that *Richard* should pay his proportionable Part of the Money which was paid to the *Marquess*, and to the *College*, upon renewing the last Lease, and that the then Defendant *William*, and the now Plaintiff *Evans* discounting the Profits, should reassign their Interest in the Tithes, free from all Incumbrances by them, unless upon the Service of a *subpœna* they should shew cause to the contrary.

July 22 Anno 23 Car. 2. *Evans* for cause shewed, that when he first lent his Money, he had no Notice of *Richard's* Claim, nor of any Trust whatsoever; *William* affirming the Pre-

misses

misses to be his own, and free from any Incumbrances; and that sometime afterwards *William* paying him the Money, he joined with him in a Conveyance of the Premises to one *Pigott*; and prayed that he might not be involved in the Account between *Richard* and *William* the two Brothers.

But *Evans* having received his Money, and assigned the Premises to *Pigott pendente lite*, and without Leave of the Court, the former Order was made absolute, saving that *William* should account for the Profits which he or his Assigns had or might have received; and that the now Plaintiff *Evans* should account for what he or his Assigns had received, and should convey as formerly decreed, &c.

The Master made his Report, since which *Richard* died Intestate, and Administration of his Estate was granted to *William his Son, the now Defendant*, who hath revived the said Decree, and prosecuted the same against *William his Uncle* and the Plaintiff *Evans*, who now brought a Bill of Review, setting forth all the Matter as before, &c. and assigned several Errors and Imperfections in that Decree.

First upon the whole Proceedings there appeared to be a Contrivance and Combination between the Intestate *Richard* and his Brother *William*, to cheat the Plaintiff *Evans* of this 1100*l.* and therefore there ought not to be any Decree against him, in regard he never received any of the Profits, but only lent his Money to buy of the *Marquess*, upon a Mortgage of the Premises at *William's* Request, without any Notice of *Richard's* Interest; and that if it had not been for his Money, neither *Richard* or *William* could have any Estate in the Premises.

And his Joining with *William* in a Conveyance to *Pigott*, pending the Suit, hath only put *Pigott* in his Place; and therefore the Premises ought to have been decreed to *Richard* against *William*, and the now Plaintiff *Evans*, and all claiming under them.

In the second Place, the Decree is repugnant and impossible, because it orders the Plaintiff *Evans* to convey to *Richard* free from all Incumbrances; whereas it appears, that the Estate was not in *Evans* at that Time, but it was vested in *Pigott*; besides there doth not appear to be any Title in *Richard* after the Act of Parliament, whereby he could create a Trust in his Brother *William*, especially to Prejudice the Plaintiff *Evans*, who had lent his Money without Notice, &c.

Without which Money neither *William* or *Richard* could have any Pretences to the Premises, because the same were granted to *Cratford*, in Trust for the *Marquess* about three Years before the Plaintiff *Evans* lent the Money, which in Truth was lent upon the Title of the *Marquess*, founded on the Act of Parliament; and in one Part of the Decree, 'tis said that *Philippa* and her An-

cestors were possessed of the Premises, &c. and in another Part, 'tis said that the *Marquess, &c.*

To these Objections the Defendant pleaded the said Decree, signed and enrolled, and generally he pleads to the Bill of Review, that there were no Errors shewn in it, and that the same Matter was fully heard and examined, and settled, which now was endeavoured to be examined again.

Therefore the Court confirmed the former Decree with these Words to be inserted, (*viz.*) that the Defendant shall hold against *Wm. Canning*, and against the now Plaintiff *Evans*, and all claiming under them, (*nisi causa per Pigott,*) and that the now Plaintiff and *Wm. Canning* in the first Place shall execute Conveyances (as settled by the Master and the Court) to the *Administrator of Richard*, the Name of which Administrator (the now Defendant) shall be inserted in the Place of *Richard's* Name, as by the Decree is directed.

John Finch, *Plaintiff.*

James Earl of Salisbury and Richard Hawtrey,
Defendants, and econtra.

Lessor covenanted with the Lessee to take a new Lease of a College, and to add a farther Term of 3 Years to his Lease; accordingly he took a new

THE *Earl of Salisbury* granted a Lease to the Plaintiff of certain Coppice Woods for 14 Years, and covenanted to take a new Lease of the *College in Cambridge*, of whom he held this Coppice Land, and that he would renew the Plaintiff's Lease with an *Addition of three Years* more to it, or answer the want thereof in Damages, for that the Wood granted to the Plaintiff by that Lease was to be *full 14 Years* Growth, before it could be cut, that being the Custom of the Place where it did grow. *Lease*, but instead of adding 3 Years, he assigned it to a third Person, who had Notice of this Covenant, and therefore he was decreed to add those 3 Years.

Accordingly the *Earl of Salisbury* took a new Lease of the College, and assigned it to the Defendant *Hawtry*, who (as it appeared in the Cause) had Notice of this Covenant, at the Time of the Assignment made to him.

Therefore it was decreed, that *Hawtry* should execute to the Plaintiff a new Lease of the said Coppice Ground, with an Addition of three Years to the Remainder of the Term in the former Lease, and under the same Rent and Covenants.

Term.

Term. Sanct. Trin.

27 Car. 2. Anno 1675.

Eleanor Ireland, Thomas Walthew *and* Mary
his Wife, and William Ireland, *Plaintiffs.*

Robert Thurston *and* Richard Smith, *Defendants.*

William Barton by his last Will dated in 1679, devised to his Sister's Children, (whereof *Eleanor, Mary and William*, the Plaintiffs, are three) 50*l.* a-piece to be paid within 3 Months after his Decease; and made the Defendant *Smith* (then in *New England*) Executor, and left a great personal Estate there, of which *Smith* the Executor possessed himself, and proved the Will, and returned into *England*, having left the Care and Management of the Estate to the other Defendant *Thurston*, in Trust to pay the Testator's Debts and Legacies, and particularly the Legacies given to the said Plaintiffs.

Legacies decreed to be paid with Costs.

Legacies of Money ought to be paid at the Time appointed by the Testator, and if no Time is fixed, then they are to be paid as

being due at his Death, and carry Interest from the Time of the Demand; and if the Executor or any other gives the Legatary any unnecessary Delay in not paying, &c. he shall be punished with Costs. *Dom. 2 Vol. 176.*

Thurston had sufficient to pay all the Debts and Legacies with a great Overplus, and therefore confessed *Assets*; but that he had expended for *Smith* more than he had received, and refused to pay the Legacies due to the Plaintiffs; because they and their Father and Mother had abused him by uncivil Language.

Wherefore it appearing that *Smith* had promised to pay the said Legacies, and had given Orders to *Thurston* for that Purpose, who was entrusted with the Estate, in order to pay the said Debts and Legacies, and had paid all but to the Plaintiffs, and had confessed *Assets*, but would not pay, because of the ill Language;

The Court decreed him to pay the several Legacies to the Plaintiffs, with Interest from the Time the same should have been paid, with *Costs* out of his own Estate, and so doing to be indemnified, &c.

Edward Harvey *an Infant*, by the Lady Elizabeth Harvey *his Mother and next Friend*, Plaintiff.

Morris and Cleyton, *Defendants.*

Bill to discover a Trust of a Mortgage.

Bill to discover a Trust of a Mortgage, and to redeem, &c. the Defendants demur as to the Trust, for that they were ready to reconvey, upon Payment of the Principal and Interest secured by the Mortgage.

As to the Discovery of a *Trust*, the Defendants *demurred*, for that the Mortgage being to secure the Payment of 600*l.* and Interest borrowed of them by Sir *Daniel Harvey* without any Trust, and for that the Defendants were willing to reconvey free from Incumbrances done by them, upon Payment of the principal Sum and, Interest, by which Means the Plaintiffs may have the Estate again in as good Condition as when it was made over to them by Sir *Dan. Harvey*, so that it was not material to the Plaintiffs, whether there was any Trust reposed in the Defendants, in the said Mortgage.

The Court allowed the Demurrer with *Costs*.

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Francis Edwards *and* Mary *his* Wife, Richard, Martha, Eleanor *and* Mary Edwards, *Infants*, by the *said* Francis *and* Mary *their* Guardian, Plaintiffs.

William Allen *and* Katharine *his* Wife, James Webb *and* Katharine *his* Wife, John Webb *an* Infant, *by the said* James *his* Guardian, *and* Elizabeth Sheward, *Defendants*.

Devise to one and his Heirs, and if he die *without* Heirs, then to another, &c. this is an Estate Tail.

Devise to one and his Heirs, and if he die *without Heirs*, then to another, &c. this is an Estate Tail.

T *Thomas Farmer of Bristol, Esq;* being seized and possessed of a real and personal Estate of the Value of 1000*l.* and more, did by his last Will dated in *Decemb. 1665*, devise unto his Brother *Ralph*, his House called the *Rose-Tavern* in *Broad-Street in the City of Bristol*, for his Life; and after his Decease to his Son *Tho. Farmer and his Heirs*, and for Default thereof, to his own right Heirs for ever, paying out of the same to his Sister *Harper* 10*l.* yearly during her Life by quarterly Payments; and he devised also to his said *Brother Ralph*, all his Lands

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Lands in *Towerhead* and *Barnwell*, to set, let, or sell any Part thereof (as it should fall in Hand) for the best Advantage, and for the only Use and Benefit of *Tho. Farmer*, the Son of the said *Ralph*, to whom he devised the same, and that he should enjoy it at his Age of 21 Years, and not till then; and if he died before that Age, then he devised the same, and all which he had bequeathed to him, * equally to be divided amongst the three Daughters of the said *Ralph*, (*viz.*) *Mary Edwards*, *Rebecca* and *Katharine Farmer*, and such of their † Children as are or should be living on the Bodies of them or either of them; and made the said *Ralph* his Executor, and in the Year 1668 he died.

* This made them Coparceners.

† By this Clause the Children are Tenants in Common for Life.

In April 1668, and sometime before the Death of the said Testator, one *Arthur Farmer* made his last Will, and the afore-said *Ralph* Executor thereof, having before that Time settled all or the greatest Part of his Estate on the said *Thomas*, the Son of *Ralph*; yet so that if he died under Age, and without Heirs of his Body, that then as to his Lands in *Hannam* in *Gloucestershire*, of the yearly Value of 160*l.* per Ann. Part thereof were settled on the said *Rebecca Farmer*, and her Heirs, clear of all Payments and Taxes, and other Part on *Katharine* and her Heirs, and the Residue on *William*, *Arthur*, and *Isaac Taylor*, and their Heirs, who out of their Shares were to pay all Taxes and Charges incident to the other two Parts, as afore-said.

Ralph proved both the said Wills, and possessed himself of all their Estates real and personal, and all Deeds and Writings concerning the same.

Rebecca died at the Age of 23 Years, in the Life-time of * *Tho. Farmer* the younger unmarried, and without Issue, having first made her Will, and the Plaintiff *Francis Edwards* and *Mary* his Wife, Executors, which said *Mary* was Sister and Heir at Law to *Rebecca*, and they the said *Francis* and *Mary* proved the Will of *Rebecca*, and took upon them the Executorship, &c.

* By her Death in the Life-time of *Thomas* the younger, she and her Executors can take nothing by the Will of *Thomas Farmer* the

elder: This is according to the Civil Law, for it was only at the Moment of the Testator's Death, that the Right of the Legatary could accrew; so that he being not alive at that Time cannot acquire it; for which Reason he cannot transmit a Right, which he never had himself. *Dom.* 2. Vol. 192.

Thomas the Son of *Ralph* died at the Age of 17, having first made a *nuncupative* Will, and the Defendants *Wm. Allen* and *Katharine* his Wife, Executors, who as Guardian of the said *Thomas* and Executrix, possessed her self of the Estate of *Thomas Farmer* the elder, and of *Arthur Farmer*, and of *Ralph* the Executor of *Arthur*, and of all Deeds and Evidences concerning the same.

The Plaintiffs now insist, that by the Death of *Thomas Farmer* the younger, they are entitled to six Parts, (the whole into eight Parts to be divided) of the said Messuage called the

the *Rose-Tavern*, in Fee, and of the Lands in *Towerhead* and *Barnwell*, that being a Chattle Lease.

¶ The Plaintiffs *Francis Edwards* and *Mary* his Wife claim *two Parts* thereof, the one in Right of the said *Mary*, and the other as she is Heir at Law to her Sister *Rebecca*, and both as Executors to her.

And the other Plaintiffs, the Children of the said *Francis* and *Mary*, (*viz.*) *Richard*, *Martha*, *Eleanor* and *Mary Edwards* claim the other four Parts as *Children* of the said *Francis* and *Mary*, by Virtue of the Devise of *Tho. Farmer* the elder, *born and alive at the Death of Tho. Farmer the younger*, for that the other Defendant *Katharine Farmer*, formerly the Wife of *Wm. Allen*, and now the Wife of the Defendant *James Webb*, and one of the Daughters of *Ralph*, having but one Child then born, (*viz.*) *John Webb* an Infant.

Therefore this Bill was brought by the said Plaintiffs to have their Shares and Proportions of the Estate so devised, and an Account of the Profits ever since the Death of *Tho. Farmer* the younger.

The Defendant *James Webb*, and *Katharine* his Wife, insist to have the *Rose-Tavern* in Right of his said Wife, she being Sister and Heir of the whole Blood to *Tho. Farmer* the younger, who was seised thereof in Fee by Virtue of the Devise of *Thomas Farmer* the elder.

And they likewise insist, that the Lands in *Towerhead* and *Barnwell* being only for a Term of Years, and but a Mortgage, and subject to be redeemed, and that there being sufficient of the Estate of *Tho. Farmer* the elder, to pay his Debts and Legacies, she, as *Executrix* to *Tho. Farmer* the younger, ought to enjoy the same as being *Assets* in her Hands.

The *Lord Keeper* was of Opinion, that the Devise of the *Rose-Tavern*, by the Will of *Thomas Farmer* the elder, to *Thomas the younger*, created an *Estate Tail* in him, who dying before he was of Age, and without Issue, the Inheritance thereof reverted to the Heirs of *Thomas the elder the Testator*, and those are *Mary* the Wife of *Francis Edwards*, and *Katharine* the Wife of *James Webb*.

That *Katharine*, though of the whole Blood to *Thomas the younger*, could not claim the Reversion in Fee expectant on the Determination of the Estate-Tail of the said *Thomas*, because there cannot be *possessio fratris* of such a * Reversion, so as to make the Sister an Heir.

* In what Case there cannot be *possessio fratris* of a Reversion.

That by the subsequent Clause in the said Will, (*viz.*) after the Death of *Thomas the younger* without Issue, not only all the Lands in *Towerhead* and *Barnwell*, but the *Rose-Tavern* ought to be divided amongst the Daughters of

of *Ralph* (the Brother of the Testator) and *such of the Children of their Bodies as were living at the Death of Thomas the younger, dying without Issue*; which said Children can only claim their respective Portions, during their Lives, as *Tenants in Common*, the *Reversion* in Fee being in their Mothers *Mary and Katharine, as Sisters and Coparceners*.

So that *Rebecca Farmer* dying in the Life-time of *Thomas Farmer* the younger, and before the Contingency happened, she and her Executors are wholly excluded out of the Devise of the Lands in *Towerhead and Barnwell*, and of the *Rose-Tavern*.

And therefore the Plaintiffs cannot claim *Six Parts in Eight*, as they have done by their Bill, but have only a Right to *five Parts in seven*, which said five equal Parts, the Whole into seven Parts to be divided of the Messuage called the *Rose-Tavern*, and the Rents and Profits thereof were decreed to the Plaintiffs during their Lives, they to hold the same against the Defendants, and all claiming under them, that *James Webb* and *Katharine* his Wife, and *John* their Son the Infant, shall enjoy the other two Parts during their Lives, and that when any of the respective Estates of the Plaintiffs the Infants shall fall by their Death, or by the Death of *John Webb* the Infant, Defendant, then the Share or Shares of such of them so dying, shall remain to, and be enjoyed by *Mary* the Wife of *Edwards*, and *Katharine* the Wife of *Webb*, as Coparceners, and by their respective Heirs.

And as for and concerning the Lease of the Lands in *Towerhead and Barnwell*, the Plaintiff *Edwards* and *Mary* his Wife, and the other Plaintiffs, the Infants, their Executors, Administrators and Assigns, shall respectively hold, possess, and enjoy *five equal Parts* thereof, the Whole into *seven Parts* to be divided; and that the Defendant *Allen* and his Wife, shall assent to the said Legacies, there appearing no Debt of the Testator *Thomas Farmer* the Elder, but sufficient Assets of his personal Estate, the Court declaring the said Lease was not *Assets* to pay Legacies.

Decreed, that the Defendants shall account for the Rents and Profits ever since the Death of *Thomas the Younger*, and pay the same in such Proportion as aforesaid; and that if the Parties cannot agree, that then the Master shall appoint a fit Person to take, receive, and sue for and recover the same, for the Benefit of all the Parties concerned, &c.

Cawston, *Plaintiff.*

Helwyes *and others, Defendants.*

Bill to examine Witnesses to prove a Codicil, &c. The Defendant demurred, for that the Matter was depending in the Spiritual Court.

THE Plaintiff exhibited a Bill to discover several Matters, and to examine Witnesses, in Order to prove a Codicil, which he pretended was made by the Defendant's Testator, whereby he devised to the Plaintiff all the Goods of him the said Testator, then in the Possession of the Plaintiff.

But it appearing, that this Matter was depending upon an Appeal to the Archives, the Defendants demurred; for that this is a mere testamentary Cause, and properly within the Conusance of the Spiritual Court, where the same is now litigated, and where the Plaintiff hath a proper Remedy for the Recovery and Relief.

The Court allowed the Demurrer.

Nicholas Hookes, *Plaintiff.*

John Simball *and* Henry Simball, *Defendants.*

Bill to set aside an Agreement; the Defendants pleaded a Release, and the Plea was held good.

THE Plaintiff being *Guardian* to the Defendant *Henry Simball*, who had a Legacy of 100 *l.* devised to him by his Father's last Will, and for which the Plaintiff had obtained a Decree, and having laid out several Sums of Money for the said *Henry*, in obtaining that Decree, and in other Matters, he the said *Henry* assigned and transferred the Benefit of that Decree to the Plaintiff, with a *Letter of Attorney* to sue, and likewise gave him a Judgment for 300 *l.* and all this was to be a Security to reimburse what Money the Plaintiff had expended for the said *Henry*, and for what he was bound with him to other Creditors.

Afterwards, upon an Account stated between them, it appeared, that *Henry* was indebted to the Plaintiff in 260 *l.* and upwards, since which Time *Henry* agreed with his Brother *John* the other Defendant, to release to him all the Benefit of the said Decree, and all Suits and Demands whatsoever.

And now the Plaintiff exhibited his Bill to set aside the said Agreement, and the Release, and to have the Benefit of the said Decree, and to have an Account how the Estate, subject to the Payment of the said *Legacy*, was disposed, the said *John Simball* being the surviving Executor of the Testator.

The

The Defendant *John Simball* pleads the said *Release*, and that in Consideration thereof he had paid and allowed several Sums to *Henry*, amounting to near 1000 *l.* and that he had no Notice of the Assignment of the Decree made to the Plaintiff, till the Afternoon of that Day in which the *Release* was signed.

And *Henry Simball* alledged, that he was drawn in to give several Bonds and Judgments to the Plaintiff, to whom little or nothing was due, and that he had no Copies of the Securities or Defeasances, and confesses the Agreement and *Release* to his Uncle *John Simball*, the other Defendant.

The Court allowed the Plea of *John Simball*, and there being several Securities mentioned in the *Release* to be made over by *John* to *Henry*, in Consideration of such *Release*; the Court decreed, that those Securities should be made good to the Plaintiff, to enable him to receive Satisfaction for the 260 *l.* which *Henry* had agreed to be due to him, (the Plaintiff) and then *Henry's* Bonds and Judgments to the Plaintiff should be vacated, and both *John* and *Henry* shall covenant not to release such Securities so given by *John* to *Henry*, till the Plaintiff is satisfied, &c.

Cautrell, Plaintiff.

Mannington, Defendant.

THIS Bill was, to discover how much Money the Defendant paid for the Purchase of the Manor of *W.* and other Lands in the Bill mentioned, and to whom he paid the same, and what Money remained in his Hands to be paid, and that the Plaintiff might be satisfied a Debt of 1800 *l.* and Interest, due and owing to him by Sir *John Jacob*, of whom he bought the Manor.

The Defendant pleads, that he is a Purchaser for a valuable Consideration, and that he hath paid and secured the Purchase-Money to Sir *John Jacob* the younger, or to his Order.

But because he did not set forth how much the Purchase-Money was, nor to whom he paid the same, this Plea was overruled, and the Defendant was ordered to answer those Particulars without Costs, but the Purchase not to be impeached.

Bill to discover, &c.
the Defendant pleaded he was a Purchaser for a valuable Consideration, and that he had paid the Purchase-Money.

Marmaduke Danby, *Esq; Plaintiff.*

John Danby *his Son and Heir apparent,* and Richard Peirce, *Defendants.*

Where the Reversion in Fee was by Fraud conveyed to him who had the Term; decreed, that it should not be merged.

THE Plaintiff being possessed of the Lands in the Bill mentioned for a long Term of 3000 *Years*, and being very aged, and having several younger Children; the Defendant *John* his Son and Heir, by Combination with the other Defendant *Richard Peirce*, who was seised of the *Reversion in Fee*, did fraudulently procure him to convey the same to the Use of the Plaintiff and his Heirs, or to the Use of the Plaintiff for Life, Remander to the Defendant *Danby* and his Heirs, or to some such Effect, on Purpose to drown the said Estate and Term for Years in the Inheritance of the Premises, and this without the Plaintiff's Privity, and to hinder him from making a Provision for his younger Children.

All this Matter appearing to the Court, it was decreed, that the Plaintiff, his Executors, and Administrators, and Assigns, and all claiming by or under him or them, shall peaceably hold the Premises, during the said Term of 3000 Years, against the Defendants, and without their Interruption, and that notwithstanding such Conveyance as aforesaid, there shall be no *Merger of the Term*, and that the same shall not be given in Evidence, or any Use made of it, against the Plaintiff, his Executors, &c. during the Residue thereof, and that the Plaintiff and his Executors, &c. may assign or dispose thereof in as ample a Manner, as if such Conveyance had never been made, and ordered *Costs*.

John Cornish, *Gent. Plaintiff.*

Thomas New, *Esq; Defendant.*

Injunction to stay Waste decreed.

ELIZABETH Cornish being seised in Fee of several Copyhold Lands in *Taunton-Dean*, surrendered the same to the Use of the Plaintiff *John Cornish* on Condition that *Thomas New* the Defendant should enjoy the same, during his Life, and by her Will she devised to the said *John* all her Household Goods, after the Decease of *Thomas New* the Defendant, who was her Executor, and who was to have the Use of them only for his Life.

I

By

By Virtue of this Will the Defendant possessed himself of all the Goods, and hath cut down several Trees, and hath committed great Waste on the Lands.

And this Bill being brought against him to stay Wafte, and to be relieved, &c.

The Court decreed, there could be no Relief for the Goods, nor for what Waste was past; it appearing in the Cause, that the Defendant had paid 100 l. of his own Money to discharge a Mortgage on the Premises; but an Injunction against him to stay all future Waste; and that the Plaintiff should pay a proportionable Part of the 100 l. (*viz.*) two Thirds thereof, and the Defendant should pay the other third Part, &c.

*The Attorney General on the Behalf of the King,
and the Master and Scholars of St. John's Col-
lege in Cambridge, Informants.*

*Sir John Platt, John Platt, Gent. and Humphrey
Gregg, Defendants.*

And

Between the said Sir John Platt, Plaintiff.

The Master, Fellows and Scholars, &c. and Francis Tanner, and Thomas Briggs, Dr. in Divinity, James Chamberlaine, David Moreton and Thomas Fothergill, Defendants.

William Platt by his last Will devised 66 Freehold Mes-
suages at Cow-Cross, together with some other Copy-
hold Lands, &c. unto the Master, Fellows and Scholars of
St. John's College in Cambridge, to maintain so many Fellows
and poor Scholars, allowing 30 l. per Annum to a Fellow, and
10 l. per Annum to a Scholar, as far as the yearly Rents of
the Estate would extend unto.

Devise of a
Charity tho'
void in Law,
by Reason
of the mis-
naming the
Devisee ;
yet 'tis a
good Ap-
pointment

in Equity within the Statute of Charitable Uses.

The

In this Case the Testator had appointed who should take the Legacy, but was mistaken in the Name; and by the Civil Law,

The Testator died, and *Robert Platt*, as Brother and Heir, entered, pretending that the Devise was void, because the Name of the *Corporate Body* was not fully expressed; and this being referred by the *Lord Keeper Littleton* to have the Opinion of the Judges, they certified, that the Devise was void in Law, but that it was a good Limitation in Equity within the Statute of Charitable Uses.

if he had not directed any particular Application of a Legacy to a pious Use, as if he had given it to the Poor of a Place indefinitely, this would be to the Poor of the Place or Parish where the Testator lived, if there was no Hospital there; but if there was, then to the Poor of that Hospital. *Dom. 2 Vol. 169.*

And now the *Lord Keeper Finch*, upon hearing all Parties, and it appearing that the *College* had made an Agreement with *Robert Platt*, the Defendant's Father, and others, which was derogatory, and in Abuse of the said *Charity*, he declared, that they had no Authority to make such an Agreement, because it was contrary to the Will of the Testator; and that it being a good Appointment within the Statute of Charitable Uses, it cannot be defeated by this subsequent Agreement; for tho' the *College* might have waived the *Charity*, yet they cannot alter it by any Agreement, because in Effect that would have made them their own *Founders*, and to hold the *Charity* upon Terms of their own making.

A Charity must be accepted upon the same Terms that it was given, or relinquished to the right

Heir, for it cannot be altered by any Agreement between the Heir of the Donor and the Donees. *See my opinion 29. Dec. 1674. in a case from the Duke of Norfolk connected with the said Fellowships.*

Therefore, since the *College* ought to take the *Charity* as 'tis given, or to leave it to the right Heir, and have done neither, but have made a special Agreement with the Father of the Defendant, that Agreement must certainly be void, because all those who were Parties to it acted under a clear Notice of the Will.

Nor can any private Laws or Statutes of the *College* give Law to any new Gifts made to them; for they must either accept them upon such Terms as the Donor hath appointed, or totally relinquish such Gifts; and in this there can be no Inconveniency; for the Fellows of such Fellowships which are newly created, cannot pretend to have any Share of the annual Profits, or the casual Revenues, which did belong to the Fellows of the old Foundation, tho' they may be capable of all Offices and Employments in the *College*, if not hindered by the local Statutes.

For these Reasons the Court decreed the Agreement between the *Masters and Fellows*, &c. and *Robert Platt*, &c. to be set aside, and that the said *Master*, *Fellows*, &c. and their Successors, shall hold and enjoy the said Freehold Messuages, &c. against

against the Defendant Sir *John Platt*, and all claiming by or from him, or in Trust for him, and that the said Sir *John* and his Trustees shall surrender the Leases of the said Messuages and Copyholds to such Person as the *Master and Fellows, &c.* shall appoint, and that they shall enjoy the same subject to the Trusts in the said Will; and that the said Defendant shall at any Trial at Law, or otherwise, admit the said Will to be a good Will, and a good Devise of the Charity to the said Master and Fellows, and their Successors, who shall confirm all such Leases, which have been really and *bona fide* made by the said Sir *John Platt*, or his Father, or by either of their Trustees, before this Bill exhibited be confirmed by the said Master and Fellows, paying the Rents and performing the Covenants to them, as they should have done to the said Sir *John Platt, &c.* and that all other Leases of the Premises shall be totally void, &c.

John Child, *Plaintiff.*

Oliver Westland and Clement Ingram, *Defendants.*

THIS Bill was brought to be relieved against a *Verdict* and *Judgment* at Law, obtained by the Defendant *Westland*, in the Name of the other Defendant *Ingram*, on a Covenant in a *Charter-party* made between the Plaintiff *Child* and the said *Ingram*, and against an Agreement made since that Time between the said *Child* and *Ingram*, of which *Child* pretended he knew nothing till the said *Verdict* and *Judgment, &c.*

The Defendants plead the said Agreement, and a former Bill brought for the same Cause dismissed.

The Court disallowed the Plea, but since the Defendant in the Action had brought a Writ of Error on the Judgment, he might proceed; and if the Judgment should be affirmed, it shall be with a *cessat Executio* till the Hearing the Cause; and that the Plaintiff *Child* do within four Days pay the Money recorded at Law into Court, and *Westland* to give Security to abide the Hearing, &c.

Bill to be relieved against a *Verdict* and *Judgment*; the Defendant pleaded a former Bill brought for the same Cause, and dismissed the Plea, not allowed.

Stephen

Stephen Doegood *and others, Plaintiffs.*

William Allen *and Sir John Robinson, Defendants.*

Certiorari
Bill, &c. an
Agreement
to take a
Lease was
decreed to
be perform-
ed.

ONE Robert Doegood, who was a Trustee for the Defendant Allen, did, at his Request, treat with Sir John Robinson for a Lease of an House in *Milk-street Market*, for which he was to pay 150 *l. Fine*, and 80 *l. Rent per Annum* for 21 Years; and this Agreement was put into Writing, and 20 *l.* was paid in Part of the *Fine*, and Sir John performed the Agreement on his Part, and tender'd a Lease to the said Robert Doegood to sign, who acquainted Allen therewith, who refused to accept such Lease, and forbad the said Robert Doegood so to do; whereupon Sir John exhibited a Bill in the Lord Mayor's Court against the said Robert Doegood, who answered, that he was only a Trustee for the said Allen, who promised to indemnify him, and in the Name of the said Allen he brought a *Certiorari* Bill, but a *Procedendo* was decreed.

Afterwards the said Robert Doegood died, having first made his Will, and the Plaintiff Stephen Doegood Executor thereof, who exhibited a Bill of *Review* in this Court to set aside the said *Procedendo*, but the former Decree was confirmed, and then Sir John obtained a Decree in the Lord Mayor's Court; and now the Plaintiff, who was Executor of Robert Doegood, exhibits his Bill, setting forth all this Matter, and that Sir John was willing to accept Allen for his Tenant, if he will perform the said Agreement; therefore to enforce him to perform the same, and to indemnify the Plaintiff against the said Decree, and to reimburse his Charges, is the Scope of this Bill.

Sir John Robinson pleads the said Decree, and answers, that he is willing to accept Allen for his Tenant, so as he pay what remains due of the *Fine*, and the Arrears of Rent, and perform the Agreement as Robert Doegood should have done.

Decreed, that Allen shall accept a Lease prepared by Sir John, and sign a Counterpart, and pay what remains due of the *Fine*, and 80 *l.* yearly Rent and Damages since the Time it ought to have been paid, and that Allen shall indemnify the Plaintiff (the Executor of the Trustee) against the said Decree, and reimburse his Charges, &c.

Richard Green and Mary his Wife, and Anne Hill,
Plaintiffs.

Thomas Gardner, Gent. Thomas Gardner an In-
fant, by Jane his Mother, William Verdon and
Robert Clavell, Defendants.

Robert Hill, late Father of the Plaintiffs, Mary and Anne, put 600 l. in the Hands of Sir Tho. Gardner, in Trust to pay his Daughters 300 l. a-piece at their respective Ages of twenty-one Years, or Days of Marriage; and in the mean Time to pay to each of them 16 l. a-piece, as Part of the Interest for their Maintenance, and the other two Pounds per Ann. to be allowed to the said Sir Thomas for his Care in putting out, and procuring Securities for the said 600 l.

Devise of
Lands to his
Brother
charged with
the Payment
of 600 l. at
such a Time;
and in De-
fault there-
of, the Te-
stator devi-
sed the

Lands to another; the Brother and the other Devisee joined in a Mortgage of these Lands, and the Mortgagee suffered the Mortgagor to continue in Possession, and to sell Timber, so that there was not sufficient to satisfy the said 600 l. and the Mortgage; decreed that the 600 l. shall be paid before the Mortgage, because the Mortgagor had Notice of this Will.

Sir Thomas paid the 16 l. per Ann. to each of the said Daughters during his Life, and by his Will devised his Woods called Boucher's Park to his Brother Francis; and amongst other Things charged them with the Payment of this 600 l. and that if his said Brother did not pay his Debts and Legacies within two Years after his Decease; then he devised the said Woods to the Defendant Clavell and his Heirs, and made his said Brother Francis Executor, who entered, and was possessed, and paid the Interest to the Plaintiffs; and afterwards the said Francis joined in a Conveyance with the said Clavell by way of Mortgage of the said Woods to Tho. Gardner of Salisbury.

Then Clavell released all his Interest to the said Francis, who still continued in Possession, and in the Year 1673, he made his Will, and the Defendant Wm. Verdon and another, Executors, and declared that they should sell all such Lands which were not entailed in order to pay his Debts; and died, leaving the Defendant Tho. Gardner the Infant, his only Son and Heir.

The Executors of Francis proved the Will, and the Plaintiffs Mary and Anne being now of Age, demanded the said 600 l. and Interest of them the said Executors of Francis, and of Tho. Gardner the Mortgagee.

The Mortgagee insisted, that he is a Purchaser without any Notice of the said Trust, and Thomas the Infant made a Title to Part of the Lands, by Virtue of a Settlement by the said Francis his Father, upon his Marriage with his (the Infant's) Mother, and

that he is seised of Part in Possession, and of the rest in Reversion after his Mother's Decease, as Heir at Law; and thereupon his Counsel insisted, that nothing could be done to his Prejudice, being an Infant.

But the Counsel for the Plaintiff argued, that by *Clavell's* Joining with his Father (*Francis*) in the Mortgage to *Tho. Gardner*, it must be intended that the Mortgagee inquired into, and had Notice of the Trust; and it appearing that the Plaintiff *Green* had received 200*l.* Part of the 300*l.* in Right of *Mary* his Wife, and that there would have been enough to satisfy the Demands of the Plaintiffs, and the Defendants, if *Tho. Gardner* the Mortgagee had not permitted *Francis Gardner* the Mortgagor to cut down and sell 300*l.* Pounds worth of Timber and more, which was growing on the Premises.

The Court decreed, that *Boucher's Park* should be liable to satisfy the Plaintiffs 400*l.* and Interest in the first Place, and afterwards what shall appear to be due to *Tho. Gardner* the Mortgagee; who shall pay the Plaintiffs by a certain Time to be appointed by the Master; or in Default thereof, the Plaintiffs shall enjoy the Premises till they are satisfied.

Christopher Danby, Esq; an Infant, by Margaret his Mother and Guardian, Plaintiff.

Sir John Read, Bart. Defendant.

J.C. L. Holt. m. Alf. Rep. n. 219.
Bargain and Sale of Lands in Consideration of 5000*l.* and this was for one Thousand Years, on Condition to

be void on repayment of 5000*l.* on any 10th Day of August during that Term, and 400*l.* per Ann. till it was paid; decreed that this was a Mortgage, and that the 400*l.* per Ann. was Interest-Money after the Rate of 8*l.* per Cent. which being now reduced by a Statute to 6*l.* per Cent. the Mortgagor shall account for no more.

J.C. when before Lord Bridgman Lord Nottingham's Mss. Holborn. of Equ. ch. 21. pl. 24.
SIR Thomas Danby the Plaintiff's Father, and *Tho. Danby* his Grandfather, in May 1673, in Consideration of 5000*l.* did bargain and sell to *Tho. Pierpoint*, Esq; and *John Lee*, Gent. certain Manors and Lands in Yorkshire for One thousand Years, conditioned to be void upon Repayment of 5000*l.* on any tenth Day of August during the said Term, and 400*l.* per Ann. till such Payment.

The Father and Grandfather of the Plaintiff had paid the said 400*l.* per Ann. till the Interest of Money was by a Statute reduced to 6*l.* per Cent. and then the Interest was paid at that Rate till this Mortgage by several Assignments came to the Defendant Sir John Read, who demanded the 400*l.* per Ann. that being after the Rate of 8*l.* per Cent. which the Father of the Plaintiff

tiff had paid in his Life-time; because he could not sue for Relief, there being several Outlawries against him; however he afterwards exhibited his Bill, and Sir *John Read* answered, and the Cause was heard; and the said *Purchase* was decreed only a *Mortgage*, and that Sir *John* should have only 6*l. per Cent.* and an Account directed upon that Foot; and a Day was appointed for the Payment of the Money, before which Day the then Plaintiff died without Issue, and the Equity of Redemption descended to the now Plaintiff *Christopher* an Infant; but before that Time, (*viz.*) in *June* 1673, without any Notice taken of the Death of the then Plaintiff, an *Order* was made by the Consent of Counsel on both sides, that Sir *John Read* should take his Debt by *Installment* of 1000*l. per Ann.* and that the Surplus of the Rents and Profits should go to the Maintenance of the Plaintiff; and that Sir *John* should have the Possession of the Premises.

Accordingly he entered, and received 1000*l.* and gave Discharges pursuant to that *Order*; and it was now pray'd that he might be obliged to perform the same.

Sir *John* in his Answer demands 400*l. per Annum*, and insists that the original Writing was *no Mortgage at Interest at 8 l. per Cent.* but in Nature of a Rent-Charge, because the Mortgagee cannot call in his Money during the *thousand Years*; and denies that he consented to the said *Order*, or took Possession by Virtue thereof; and says that he received the 100*l.* towards the Satisfaction of his Arrears of the 400*l. per Annum*, and of Part of his principal Money; and not pursuant to the said *Order*, and that he cannot in the least pretend to any *Forfeiture*, there being no Clause in the original Grant to enforce the same.

The Court declared they could not compel Sir *John Read* to perform the said *Order*, because it was made after the Death of the then Plaintiff; but that the said original Grant was a *Mortgage*, and not a *Rent-Charge*, and that the Defendant ought to have no more than 6*l. per Cent.* since the Interest of Money was so reduced by the Statute; and directed an Account, and a Redemption at Interest, with respect to the Time the Statutes were made concerning Interest; and as to the 1000*l.* received by Sir *John Read*, the Plaintiff was left to his Remedy at Law.

2 Mod. 193.

T. Jones 71.

2 Lev. 185.

S. C. *Print on differ. points*

Samuel Astry.

John Ballard.

Bill to discover upon what Trust a Lease was made, the Defendant pleads a Decree made against the Plaintiff, and a Dismission of a former Bill; and demurs for that a Decree cannot be altered by an original Bill.

Thomas Roberts being seised in Fee of the Manor of *Westerleigh*, did by Indenture dated 10 March 1658, demise the same to *Nich. Roberts* for sixty Years, under the yearly Rent of a Pepper-Corn, and this was to secure an Annuity of 80 l. per Ann. to the said *Nicholas* for Life; unless the said *Thomas* should within one Year pay unto *Nicholas* 1100 l. and it was agreed, that on Payment thereof, the said Demise or Lease should be delivered up; and *Nicholas*, as it was suggested, sealed a *Redemise* or *Defeasance* to that Purpose, which *Redemise* was afterwards burnt by the said *Nicholas*, or by the Defendant *Ballard*, as it was likewise suggested.

The Defendant was ordered to answer the Trust, and his Plea was saved till the Hearing the Cause.

Nicholas being in Possession, and being indebted to the said *Ballard*, and likewise to *Astry*, he requested the Plaintiff *Astry* to take a Lease of him of the said Manor and Premises, and to pay him 120 l. for his Life, and to retain what was due to him the said *Astry*, and to apply the Remainder of the Rents and Profits to pay some small Sums of Money due from *Nicholas* to *Ballard*; and thereupon *Nicholas* demised the Premises to the Plaintiff *Astry* for fifty-one Years, and this was by Indenture dated 3 Apr. 1665, paying unto the said *Nicholas*, during the said Term 120 l. per Ann. if he lived so long, and after his Death, a Pepper-Corn only.

Ballard entered by the Leave of *Nicholas*, and received the Profits to a greater Value than the Money which he pretended due to him from *Nicholas*, and about the Year 1667, the Plaintiff *Astry* contracted with *Nicholas* for the Sale of his Interest in the Premises for 2500 l. being encouraged by *Ballard* who affirmed he had received Satisfaction for his Debt, and had no farther Demand out of the Estate; and *Nicholas* thereupon assigned all his Interest to one *Stowke* in Trust for the Plaintiff *Astry*, who afterwards, and in the same Year with the Privity of *Ballard*, contracted with one *Thomas Roberts* for the absolute Purchase of the said Manor, for which he was to give 16000 l. and took a Conveyance thereof accordingly, and paid the greatest Part of the Purchase-Money, supposing the Premises were not liable to any other Incumbrances, than the said Lease, and a Mortgage to

one *Vicars*, and another to Dr. *Ingelo*, and a Statute to one *Gunning*, and one Judgment to *Wm. James*, and another to *Wm. Pitt*; but that several Creditors of *Thomas Roberts* by Combination with the said *Ballard*, had obtained a Decree against the Plaintiff *Astry*, that the Premises should be sold for the Payment of *Thomas Roberts* Debts, he having made a Voluntary Settlement to that Purpose, prior in Time to the Plaintiff's Purchase.

And *Ballard* had obtained another Decree, that the Plaintiff should assign to him the Remainder of the Term of 51 Years, granted to him by *Nicholas*; but that the Interest thereby decreed to *Ballard*, was subject to the original Trust; and that if *Ballard* is satisfied of what is due to him from *Nicholas*, then the Remainder of the Term ought to be for *Nicholas*, or for him who hath his Right.

That this Decree was made on purpose, that *Ballard* might Reimburse himself out of the Rents and Profits, what was due to him from *Nicholas*; and that by an express Agreement, he was then to reassign the Term to the Plaintiff *Astry*.

But *Ballard* prosecuted and obtained the said Decree contrary to the Intent of the said Agreement; and the Plaintiff in Obedience thereunto, assigned the said Term to him who entered and received the Profits, and granted several Estates, and incumbered the Premises.

And the Plaintiff *Astry* being willing to pay *Ballard* what shall appear to be due to him from *Nicholas*, he ought on Payment thereof to reassign the Premises to the Plaintiff, whereby he may be enabled to perform the first Decree made for the Benefit of the Creditors, by applying the Remainder of the Purchase-money to satisfy them.

But *Ballard* refuses to come to an Account with the Plaintiff, or to discover what is due to him at the Time the said *Nicholas* made the said Lease to the Plaintiff *Astry*; therefore he exhibited this Bill to discover the Trust of the first Lease made by *Thomas Roberts*, to *Nicholas*; and what was due from him to *Ballard*, at the Time he made the Lease to the Plaintiff, and upon what Trust that Lease was made; and what Satisfaction *Ballard* hath received, and what remains due to him, and to have Reassignment upon Payment thereof.

Ballard pleads the Decree against the Plaintiff *Astry*, and a Dismission of the former Bill brought by him to which the said Decree had been pleaded.

And demurred for that this Bill sought to alter and confound several Decrees obtained at the Suit of distinct Plaintiffs by original Bills, which tends to the great Derogation of the Justice of this Court; because 'tis to draw again into Examination a Matter already

ready examined and settled by a Decree; whereas a Decree cannot be altered by an original Bill.

The Lord Keeper declared, that the Plaintiff *Astry* being now in the Place of *Thomas* and *Nich. Roberts*, 'tis just and reasonable, that a Discovery should be made how far *Ballard's* Interest did extend in the Lease; and therefore he ordered that he should answer as to the *Trust* charged between him and *Nicholas*; and upon what Trusts the Lease was assigned by *Nicholas*; and whether, after Payment of the Money intended to be secured, and what was due to *Ballard*, the Estate was to return; and the Benefit of the Plea was saved till the Hearing this Cause.

Cyriack Coke, *Gent. Plaintiff.*

Thomas Bishop and Samuel Verdon, *Defendants.*

Plea of a former Decree, and that he made Conveyances pursuant to it. Demurrer for that the Plaintiff is concluded by the former Decree, and therefore ought not to bring an original Bill for any Matter in Issue in the former Cause.

T *Thomas Bishop* being seised of several Freehold and Copyhold Lands, did by Deed duly executed bearing Date 14 Car. 2. in Consideration of 1500 *l.* paid unto him by the Plaintiff *Coke*, covenant to settle all the Lands which he had at that Time (except some particularly excepted,) so that immediately after his Death, they should come to the said Plaintiff *Coke* and his Heirs; and likewise to leave him all his personal Estate (except 3000 *l.* and also that all the Lands which he the said *Bishop* should purchase after the Date of the said Deed, should be so purchased, that after his Death they should come to the said Plaintiff as aforesaid; and the *Bishop* said refusing to perform the said Covenants, the Plaintiff *Coke* exhibited a former Bill against him, in which Cause it was decreed, that the Defendant should make such Conveyance as aforesaid, and that the Writings should be delivered to the *Usher of the Court*, there to remain for the Use of both Parties.

But though the Deeds and Writings together with a Schedule of the Particulars were brought into Court, yet *Bishop* and *Verdon* his Solicitor had by some indirect Means got them from the Master, so that he could not direct the Conveyances; and *Bishop* having purchased several Lands since the last Decree, and the Conveyances thereof being made in his own Name, to him and his Heirs, and not so as the same will remain, and come to the Plaintiff, after the Death of the said *Bishop*;

Therefore the Plaintiff exhibited this Bill, that *Bishop* may discover what Lands he had at the Time he entered into the Covenants as aforesaid, and what he hath purchased since the former Decree, and that all may be settled on the Plaintiff according

ing to the said *Covenants*; and that both he and *Verdon* may discover the Writings and Deeds brought before the Master, and where they now are, and be compelled to produce them.

Bishop pleads, that he made certain Conveyances pursuant to the former Decree, and that he did not take the Deeds and Writings from the *Master*, but believes that *Verdon* had them, and that he had made an *Affidavit* he never had them since they were produced before the Master.

And he *demurred* to that Part of the Bill which seeks a Discovery of the Lands purchased since the Decree, and the Conveyances thereof, for that the Plaintiff hath not entituled himself thereunto, by any Title accrued since that Time, and that the said Decree did not extend to any Lands he should hereafter purchase; and that the Plaintiff is concluded and bound by the said Decree, and therefore ought not to bring this *original Bill* for any Matter in Issue in the said former Cause.

And the Defendant *Verdon demurred*, for that the Bill contained several and distinct Matters, in some of which he is not concerned, and that if the Plaintiff would have any Relief against him concerning the said Deeds and Writings, the same ought to be prosecuted under that Decree, and according to the Course of the Court in such Cases, and not by an original Bill.

The *Lord Keeper* ordered the Defendants to answer all, but to such Lands purchased since the Decree, and to that Part the *Demurrer of Bishop* was allowed, but without *Costs*.

Thomas Hayes *an Infant, by his Guardian,*
Plaintiff.

Penelope Hayes, *Widow, and Margaret Hayes,*
Defendants. *J. l. 1. Cha. Cas. 223.*
2. Trin. 139.

Thomas Hayes by his last Will, devised *Clewerworth Mills* to his Son *Alexander Hayes*, upon Condition he pay to his Daughter *Margaret* 500*l.* on her Day of *Marriage*, or when she shall be of the Age of twenty Years, and in Default of Payment thereof, then he devised the said Mills to *Margaret and her Heirs*.

Devise to his Son, paying his Daughter 500*l.* and in Default thereof to the said Daughter and her Heirs.

The Son devised it to his Mother for Life, and afterwards to an Infant and his Heirs. The Mother and Daughter combine together, and the Mother refused to pay the 500*l.* by which Means the Estate would be forfeited to the Daughter, and the Infant defeated.

Decreed that the Mother pay one third Part of the 500*l.* and that if she refuse, then the Infant paying the whole, shall have both her Right, and the Estate.

Alexander entered, and by his last Will, devised to his Mother *Penelope Hayes*, all his Lands in *Berkshire* and *Surrey*, (whereof the said *Mills* were *Parcel*) for her *Life*, and afterwards to the Plaintiff *Thomas Hayes the Infant*, and his Heirs, and soon after died.

And now *Penelope* combining with her Daughter *Margaret*, refused to pay the 500*l.* to her, and by that Means the Estate would be forfeited to her.

Therefore to prevent such *Forfeiture*, the *Infant* exhibited this Bill, alledging that he was willing to pay his Proportion of the said 500*l.* or the whole, so as he may have *Penelope's* Estate for Life.

The Court declared, that *Penelope* ought to pay one third Part of the 500*l.* or else the *Infant* paying the whole, should enjoy her Estate for Life.

And decreed, that if *Penelope* should refuse to pay that Proportion, that then the *Infant* paying the whole 500*l.* shall enjoy the Premises to him and his Heirs against the Defendants; and all claiming under them; and that both the Defendants shall join in a Fine to the *Infant*, and convey to him and his Heirs; but if *Penelope* pay one third Part, then the Uses of the Fine shall be to her for Life, and afterwards to the *Infant* and his Heirs.

Ralph Hodgkin, *Merchant, Plaintiff.*

Elizabeth Blackman, *Administratrix of Maurice Blackman, and Mundiford Brampston, Serjeant at Law, Defendants.*

The Husband before Marriage gave a Bond to leave his Wife 1500*l.* if she survived; they married, and he died in Debt to others, and made no Provision for her. Decreed that this Bond shall be satisfied before other Creditors.

THE Bill was, to be relieved for Debt of 300*l.* due to the Plaintiff *Hodgkin*, from *Maurice Blackman*, late Husband of the Defendant *Elizabeth Blackman*, who died intestate, and to whom she is *Administratrix*, and to discover *Assets, &c.* The Defendant *Elizabeth* says, that upon her Marriage with the said Intestate, he agreed with Dr. *Argaile* her Father to leave her worth 1500*l.* if she survived, and that he entered into a Bond of 3000*l.* Penalty to her said Father, conditioned to the Purpose as aforesaid; and that her Husband is since dead, and having not made any such Provision for her, and that her Father being also dead, her Mother as Executrix to her Father, hath put the said Bond in Suit against *E.* and hath got Judgment against her, and that she hath paid 250*l.* Part of the 1500*l.* and that her said Husband's Estate is not sufficient to satisfy half that Sum which she insists ought to be paid unto her in the first Place.

The

Term. Mich. 27 Car. 2. Anno 1675. 233

The Court was of Opinion there could be no Relief against this Bond, but only against the Penalty ; but that the 1500 *l.* ought first to be paid, but that there shall be a Discovery of Assets, and an Account, and that 200 *l.* Part of the Marriage Portion of the said *Elizabeth*, and now remaining in the Hands of *Serjeant Brampton*, shall be brought into the said Account ; and that what Assets shall remain after the 1500 *l.* paid, shall go towards Satisfaction of the Plaintiff's Debt.

Term. Sanct. Mich.

27 Car. 2. Anno 1675.

Thomas Carlisle, *Administrator of Sir Peter Hardres, Plaintiff.*

The Lady Phœbe Hardres, Widow, Defendant.

THE Plaintiff exhibited his Bill to have a Discovery of the real and personal Estate of Sir *Peter Hardres*, the same being liable to a Judgment which the Plaintiff had obtained against him. Bill against an Administratrix, to discover the Intestate's Estate; she

pleads, that Administration was granted to another by the Prerogative Court, by which the Administration granted her (being out of an inferior Court) is repealed. The Plea was over-ruled with Costs.

The Defendant put in an insufficient Answer, and some Time afterwards a *Plea*, and for Cause shewed, that since the former Answer, Administration of Sir *Peter Hardres's* Estate was granted by the Prerogative Court to the Lady *Atkins*, as Curatrix, during the Minority of Sir *Thomas Hardres*, the only Son and Child of Sir *Peter* ; which Prerogative Administration had repealed the Administration granted to the Plaintiff, that being out of an inferior Court.

But the Court over-ruled this Plea with Costs.

H h

William

William Bostock *an Infant, by his Guardian,*
Plaintiff.

Jermin Ireton *and Mary his Wife, Ralph Thick-*
ness, Nicholas Weld, and others, Defendants.

Devise of
3000 l. to his
Daughter,
provided she
marry with
the Consent
of his Exe-
cutors, and
if not, then
850 l. of the
said 3000 l.
to be abated,
she married

THE Father of the Plaintiff, by his last Will, devised 3000 l. to his Daughter *Mary*, (the now Defendant) provided that she marry with the Consent of his Executors; she afterwards married the Defendant *Ireton*; and it appearing, that the Executors did consent to it, upon *Mr. Ireton's making a Settlement of 400 l. per Annum on her for her Life*, and upon their Issue afterwards; and tho' there was no other Consent than upon the Condition as aforesaid, and tho' that Condition was not performed, yet the Marriage took Effect.

with Consent of the Executors, so as the Husband would settle 400 l. per Annum on her for her Jointure; the whole 3000 l. was decreed, tho' the Consent was only conditional.

And now the Plaintiff exhibited his Bill to have 850 l. out of the 3000 l. so much being to be abated of the Portion, if she did not marry with the Consent of the Executors, which, as it was insisted by his Counsel, she did not, because the Consent of the Executors was only conditional, viz. *so as the Defendant Ireton settle a Jointure of 400 l. per Annum on her, which he had not done*; therefore, without such Settlement they did not consent to the Marriage.

But the Counsel for the Defendant *Ireton* offered, that upon Payment of the said 3000 l. such Settlement should be made, and that Conveyances for that Purpose had been long since drawn, and which would have been executed, if the other Defendants would have executed an Assignment of a Mortgage, by which the said 3000 l. was secured; but that now Sir *William Jones*, the Attorney General, having purchased the Equity of Redemption of the said Mortgage for 2700 l. had exhibited his Bill against the Defendants the Executors, and had obtained a Decree for them to assign the said Mortgage to him, or to whom he should appoint.

The Court dismissed the Bill, as to that Part thereof which seeks to have 850 l. out of the Portion of 3000 l. because the Marriage was had without the Consent of the Executors, for the contrary appeared to be true; and decreed, that the Money, payable by Sir *William Jones* for the Equity of Redemption, together with what Interest was Arrear for the same, should be paid to the said *Jermin Ireton*, to save the Charges of taking it out

out of Court, he and his Father entering into a Recognisance of 6000 *l.* to make such Settlement on the said *Mary*, as was agreed on; and in such Case the Executors to be indemnified, and to have their *Costs*.

Atkins and others, Plaintiffs.

Darford and others, Defendants.

THE Plaintiff having a *Patent* from King *Charles* for 40 Years sole Printing all *Law-Books*, made a Lease thereof to the Defendants for 21 Years, at the Rent of 100 *l.* per Annum, and now exhibited his Bill for the Arrears of Rent for 4 or 5 Years, which was not paid.

An Account decreed, and for the Plaintiff to make a new Lease with the same Covenants as in the old.

The Defendants, to avoid this Lease, say, they were put to 2000 *l.* Charges in Suits at *Law*, and in Parliament, and at the Council-Board, with the Company of Stationers and others, of which the Plaintiff promised to bear a fourth Part; which if he will perform the Defendants will pay all Arrears of the Rent, and one of them offered to pay the whole himself, so as he might have the sole Interest of printing such Books, and the Lease renewed to him.

Thereupon the Court decreed an Account, and on Payment of what shall appear to be due to the Plaintiffs, they shall seal a new Lease for the Remainder of the Term in the former Lease, and with the same Covenants, &c.

Corderoy versus Carpenter and others.

Et econtra

Carpenter versus Corderoy.

Corderoy owed one *Swetnam* 73 *l.* and *Swetnam* owed one *Hind* so much Money, and a much greater Sum to one Carpenter.

Relief decreed against a Judgment on a foreign Attachment.

Corderoy, by the Order, and at the Request of *Swetnam*, gave a Note under his Hand to *Hind*, to pay him the 73 *l.* due to him from *Swetnam*, and afterwards he suffered Carpenter to attach this Money in his (Corderoy's) Hands, as due to him from

H h 2

Swetnam,

Swetnam, and upon that Attachment *Carpenter* got a Verdict and Judgment.

Now *Corderoy* being by this Means liable both to *Hind* and *Carpenter*, exhibited his Bill to prevent Payment to both, and offered to bring the 73 *l.* into Court, that he might not pay the Money twice, and that such Person may have it to whom the Court shall order it.

The Court accordingly decreed the 73 *l.* to be paid to *Hind*, and that *Carpenter* might take his Remedy at Law, and should assign his Judgment to the Six Clerk, &c. in Trust for *Corderoy* to reimburse him the 73 *l.*

Charles Bridgman, *Plaintiff*.

Thomas Tyrer *and others*, *Defendants*.

Money due
on a Mort-
gage decreed
to be Assets
in Equity.

T *Thomas Godwin*, upon the Marriage of his Daughter with the Plaintiff *Charles Bridgman*, promised to give her 600 *l.* the Marriage took Effect, and *Thomas Godwin* died; and now the Plaintiff exhibited his Bill against the Executors to have the Benefit of this Promise.

The Defendants refused to pay the 600 *l.* pretending Want of *Assets*; and that it was a Marriage, not only without the Father's Consent, but that the Husband agreed to settle 50 *l.* per *Annum* on her, which he had not done.

But it appearing, that the Marriage took Effect upon the said Promise made by the Father, and that there were *Assets*, and 600 *l.* due to the Testator's Estate, which was secured by a Mortgage; and that the Plaintiff, in an Action brought by him against the Executors, had obtained a Verdict and Judgment against them.

The Court decreed, that the Executors should come to an Account, and pay the said 600 *l.* to which Payment the personal Estate shall first be liable; and if that fall short, then the Principal and Interest due on the said Mortgage (after real Incumbrances are taken off) shall be liable to make it good, the Court declaring, that the Money due on that Mortgage was *Assets in Equity*, and ought to be apply'd (after the real Incumbrances made by the Mortgagor are taken off) with the personal Assets towards the Plaintiff's Satisfaction.

John Briscoe, *Esq;* and the Lady Anne his Wife,
Plaintiffs.

Basil Earl of Denbigh, the Lord Sherrard, and several others, Defendants.

EDward Lord Vaux, and Elizabeth late Countess of Banbury, who was the Mother of Nicholas, late Earl of Banbury, upon a Treaty of Marriage between the said Nicholas with Isabella the Daughter of the Lord Newport, and in Consideration of 8000 *l.* Portion, and a Jointure to be made to her, did, by Lease dated 2 Feb. 1649, and by Release bearing Date the 25th of the same Month, and made between the said Lord Vaux and the Countess Elizabeth of the first Part; Freeman and Lund of the second Part; Nicholas Earl of Banbury and the Lady Isabella of the third Part; William Earl of Salisbury, Basil Earl of Denbigh, and Francis Harvey of the fourth Part, release and confirm the Manors and Lands in the Bill mentioned, to the Use of the said Nicholas and Isabella, and to the Survivor of them for their Lives, and afterwards to the Earl of Salisbury, &c. for 99 Years upon Trust, that if the said Isabella die, living the said Nicholas, and without Issue Male, and that if there should be one or more Daughters then living and unmarried, that in such Case the said Trustees, and the Survivor of them, or the Executors and Administrators of such Survivor, shall, by Sale or Lease of the Premises, or of any Part thereof, at their Discretion raise and pay 6000 *l.* for the Marriage-Portion of such Daughter and Daughters, (*viz.*) if but one, then the whole 6000 *l.* to be paid to her, if more than one, and but two, then 3000 *l.* apiece, and if three or more, then the 6000 *l.* to be equally divided amongst them at their respective Ages of 18 Years, or Days of Marriage, which shall first happen after the Death of the said Isabella, &c.

Where subsequent Articles made by the same Person, and for the same Thing, shall not impeach a precedent Settlement. And where a Counterpart of a Mortgage was decreed to be allowed as the Original which was lost.

The Marriage took Effect, and the Lady Anne, the Wife of the Plaintiff Briscoe, and first the Wife of one Charles Fry, is the only Daughter of the said Nicholas and Isabella, and living at her Death, which was about 18 Years since, so that the said 6000 *l.* became due to her; and Nicholas, some Time before his Death, enter'd into Articles with Charles Fry, the first Husband of the said Anne, to pay the said 6000 *l.* within four Years, and Interest in the mean Time after the Rate of 5 *l.* per Cent. which he paid during the Life of the said Fry, but no Part of the Principal or Interest to the Lady Anne whilst she was a Widow; but he paid the Interest, and 500 *l.* Part of the Principal

pal to the Plaintiff *Briscoe* since he married with the said *Anne*, so that now there remains 5500 *l.* due, for which he exhibited his Bill against the Trustees, who confess the Trust, but that the Countess of *Banbury* claims her Jointure out of the Lands, and the present Earl of *Banbury*, who is a *Minor*, claims the Reversion in Fee, therefore they desire the Direction and Protection of the Court.

And now the Counsel for the said *Earl* and *Countess* insisted, that tho' such Deed of Settlement was made by *Lease* and *Release*, as aforesaid, to raise the 6000 *l.* Portion, yet the Plaintiff ought to resort to the Articles for Relief, for by those Articles the Settlement was made void; or at least to discount the Interest, which with the 500 *l.* paid to the Plaintiff, ought to be accounted as principal Money towards sinking the 6000 *l.* and not to resort to the Settlement and Articles likewise, as they had done, by suing *Nicholas* in his Life-time upon the said Articles, when he did forbear to pay any farther Interest, perceiving he was in the Wrong to pay it before it was due.

But on the other Side it was insisted, that the *Articles* had not vacated the Settlement, there being not a Word in them tending to any such Purpose; which Articles were made at the Desire of the *Earl*, and without the Privity of the Trustees, who had the legal Estate vested in them; but that the Plaintiffs shall discount for the said 500 *l.* and for the Rents they have received, so as they may be secured to have the Rest of the said Portion.

The *Lord Sherrard*, one of the Defendants, says, he was a Trustee in the *Countess of Banbury's* Settlement, and sets forth a Mortgage made to *Sir Thomas Lucie* for 2000 *l.* which by several Assignments is now come to him; and that he is willing to execute the Trust, saving his Interest in the said Mortgage, being for a valuable Consideration, and prior to the said Settlement, there being enough left to perform the Trust; to which End he exhibited a Bill against the other Trustees, in which he sets forth the Loss of the original Mortgage-Deed, and prayed Relief therein.

The Court decreed, that the Articles did not impeach or vacate the Settlement; and that the Interest paid pursuant to the Articles, is not to be accounted for, or computed as Part of the 6000 *l.* but that the 500 *l.* is Part thereof, and that common Interest shall be allowed for the Residue since Earl *Nicholas's* Death to the Time agreed on, but no Interest shall be allowed after the Time agreed on by the Articles, during the Earl of *Banbury's* Life.

That the Trustees shall account for the Rents and Profits of the Estate received by them, or by their Order, and pay over the same to the Plaintiff *Briscoe*, or his Assigns, which Rents so received,

ceived, or to be received, are to go in the first Place to the Payment of the Interest since the Earl's Death, and the continuing Interest, and then to sink the Principal.

That the Trustees, in convenient Time, may sell or demise, according to the Deed of Trust, so much of the Lands (not included in the Mortgage) as will raise the Remainder of the said 6000 l.

That the *Lord Sherrard* shall enjoy the Benefit of his Mortgage, the Counterpart whereof shall be allowed as an *Original*, and admitted as such at any Trial, &c.

Nicholas Glynn, *Esq; Plaintiff.*

William Scawen, *Esq; Defendant.*

THE Plaintiff's Grandfather being seised of a *Moiety* of certain Lands in the Bill mentioned, made a *Lease* thereof to the Defendant's Father for 3 Lives, under a certain Rent, and paying an *Heriot* upon the Death of each of the Lives; which Lands being contiguous, and adjoining to other Lands of the now Defendant, could not be known, for that the Fences were thrown down, and the Boundaries were destroyed; and therefore the Plaintiff exhibited a Bill to have a Discovery thereof, and an Account of what *Rent* was in Arrear, and of *Heriots*, &c.

Bill to discover Boundaries, the Fences being thrown down, and to give an Account how much Rent was in Arrear.

The Defendant demurred, because the Plaintiff hath not made Oath that the *Counterpart of the Lease was lost*, it appearing by the Bill, that the Lease was not determined, and for that he did not offer to confirm the *Lease* for the Residue of the Term.

The Court ordered him to answer as to the *Boundaries*, and what he knows concerning the Payment of any Rent, and after that is done, there shall be no farther Proceedings in this Court.

Charles Cornell, *Plaintiff.*

Warren, and Ward, and others, *Defendants.*

THE Plaintiff exhibited his Bill to be relieved for several Goods, Wares, and Merchandizes, ready Money in Gold and Silver, as well *Foreign* as *English*, and for several *Pearls*, Bill to be relieved, &c. The Defendant pleads a former Bill for the same Matter and dismissed, and an Action brought for the same Matter, and the Plaintiff nonsuited; and another Judgment on a Verdict on full Evidence, and affirmed in Error.

Jewels,

Jewels, Diamonds, Amber and Ambergrease, and other Things of great Value, Bonds, Bills, &c. which are come to the Hands of the Defendant, and ought to be delivered to the Plaintiff.

The Defendants plead a former Bill depending for the same Matter, which, upon hearing the Cause, was dismissed, and an Action brought at Law in the Court of *Common Pleas* for the same Things, in which Action the Plaintiff was nonsuited; and that there was a Judgment obtained against him after a Verdict upon full Evidence, which Judgment was afterwards affirmed on a Writ of Error.

The Court allowed the Plea.

Edmund Draper, *Plaintiff.*

Sir Robert Jafon, John Pargiter, and others, *Defendants.*

Demurrer to a Bill to discover fraudulent Conveyances in Prejudice of a Mortgagee, over-ruled

THIS Bill was, to discover several fraudulent Conveyances set on Foot by the Defendants, by Contrivance to defeat the Plaintiff, who was a Mortgagee, from the Defendant Sir Robert Jafon, of certain Manors and Lands in the Bill mentioned, for securing the Repayment of 1000 l. and Interest.

The Defendant *Pargiter* demurred, for that the Bill is for different Matters against several Defendants, and the Plaintiff did not distinguish for what particular Conveyances or Incumbrances made by the several Defendants he would have a Discovery made.

The Counsel for the Plaintiff argued, that the Bill was for a Discovery of Incumbrances made by the other Defendants, wherein *Pargiter* was not concerned.

And this appearing to the Court, the Demurrer was over-ruled, and *Pargiter* was ordered to answer, but not to any Incumbrances made by the other Defendants.

Bartram, *Plaintiff.*

Dennett, *Defendant.*

Plea of general Pardon allowed.

INTERROGATORIES were exhibited against the Plaintiff to be examined as to a Contempt of the Court, in not paying Costs to the Defendant, which he was ordered to pay.

He pleaded the *general Pardon* made Anno 25 Car. 2. and the Court allowed the Plea with Costs, &c.

Sir Philip Boteler, Bart. Plaintiff.

Mary Massey, Widow, and others, Defendants.

P*hilip Boteler*, Esq; the Plaintiff's Ancestor, being seised in Fee of several Lands in the Bill mentioned, did by Deed bearing Date 5 September, in the 9th Year of the Reign of Henry 8. upon Sale of these Lands, reserve a Rent of forty Marks yearly, issuing out of the same, and to be paid to the Vendor and his Heirs, (whose Heir the Plaintiff is,) which Deed was enrolled at Chester; and the Plaintiff having lost the Counterpart, could not recover at Law, though the said Rent was paid till the Year 1652, but was now refused to be paid; therefore the Plaintiff exhibited his Bill to enforce the Payment thereof, and to discover what was in Arrear, which as he suggested did amount to 500*l*.

Sale of Lands by Deed dated 9 H. 8. reserving 40 Marks per Ann. payable to the Vendor and his Heirs: this Deed was enrolled at Chester, and the Rent paid till the Year 1652, but the Counter-

part being lost, it was now denied to be paid.

Decreed to be paid with Interest, but on Appeal to the Lord Keeper, the Decree as to the Interest was reversed, because the Deed being enrolled, it was a Neglect in the Plaintiff, that he did not recover the Rent sooner.

The Defendants say they are *Purchasers for a valuable Consideration without Notice, &c.* and that some of them have enjoyed the Lands 30 Years and more, in all which Time Demand was not made of these 40 Marks, or of any Part thereof.

Upon hearing this Cause at the Rolls, it was decreed that the Defendants should pay the Arrears *with Interest*; but upon an Appeal to the Lord Chancellor Finch, that Decree was reversed as to the *Interest*; because it appeared by the Bill, that the Deed was enrolled at Chester, therefore it was the Plaintiff's Neglect, that he did not recover the said forty Marks per Ann. sooner.

Chaplin and his Wife, Plaintiffs.

Coe and Ellen Hart, Widow, Defendants.

THE Father of the Plaintiff's Wife, by his last Will, devised to her 160*l*. to be paid at her Age of 19 Years, and soon after he died.

Trustee having broke his Trust by delivering up a

Bond, and taking Security to save himself harmless, was decreed to pay the Money.

The Mother improved this Sum to 200 *l.* and afterwards married one *Jeggon*, who gave a Bond to *Coe*, and to *Hart* the Defendant's Husband, in the Penalty of 400 *l.* conditioned to pay the said 200 *l.* to the said Legatee at her Age of nineteen Years.

Jeggon died Intestate, and *Hart* is likewise dead, having made a Will, and the Defendant *Ellen Hart* Executrix; and now the Plaintiffs exhibit their Bill against *Coe*, and the said *Executrix of Hart* to have this Legacy, or otherwise to put *Jeggon's* Bond in Suit.

But they pretend that they had delivered up the Bond to one *Kingsbury* the Plaintiff's Uncle, and had taken some Security, or Counterbond from him to save them harmless.

The Court was of Opinion, that the Defendants had broke their Trust by delivering up the Bond, and decreed that they should make good the 200 *l.* and Interest to the Plaintiff ever since it was due.

Term. Sanct. Hill.

28 Car. 2. Anno 1675-6.

Sir George Carterett, Bart. Plaintiff.

Sir William Pettie, Defendant, & econtra.

Bill for a
Partition
of Lands in
Ireland; De-
murrer for
that the
Plaintiff may have Relief in the Courts of that Kingdom, and is not proper here for Relief.

THIS Bill was to have a Partition of Lands in *Ireland*, granted to both the Plaintiff and the Defendant, by Letters Patents of King *Charles II.* and to settle the Inheritance thereof as well as the Possession.

The Defendant demurred for that (of the Plaintiff's own Shewing) the Lands are in *Ireland*, where he may have Relief in his Majesty's Courts there, if his Cause is proper for Relief; but 'tis not proper to be determined here, especially upon an original Bill.

And for this Reason the Court allowed the Demurrer.

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Dunfall

Dunstall and his Wife, Plaintiffs.

Rabett, Defendant.

THE Plaintiffs exhibit this Bill to have a Legacy of 100 *l.* Devise of a Legacy of 100 *l.* a-piece to 3 Children, and the Residue of his Estate equally to be divided amongst them; two given to *Elizabeth*, the Wife of the Plaintiff, by the last Will of her Father, who devised the like Sum to the Defendant her Brother, and to two more of her Brothers; and that all the *Residuary* Part of his Estate should be equally divided between them four, that the other two Brothers had received their Legacies, but *Elizabeth* the Plaintiff's Wife had not received her Legacy, or any Part thereof.

had received their Legacies, and the third exhibited a Bill for her Legacy, to which the Defendant demurred, for that the other two were not made Parties.

The Defendant demurred, for that the two Brothers who were *Residuary* Legatees were not made Parties to this Bill.

But the Court over-ruled the Demurrer as to the Legacy, but allowed it as to the Share of the *Residuary Part*.

Sir Thomas Davis and Robert Harvey, Esq;
Plaintiffs.

Rowland Dee, one of the Executors of Charles Everard deceased, and others, Defendants.

THE Defendant *Dee* was Executor to one *Everard* a Banker, who left a considerable *real Estate*, besides a great personal Estate, to the Value of 50000 *l.* which the Defendant possessed, and converted to his own Use; and set up fraudulent Judgments to defeat the Plaintiffs of a Debt of 1400 *l.* due to them from the said *Everard*; therefore they exhibited a Bill to have a Discovery of the said Judgments, and to have the said Sum of 1400 *l.* decreed to them with Interest.

ing this Bill, his Administration was repealed by Sentence in the Prerogative Court, and Administration was granted to another.

The Defendant pleads the Statute of *Limitations*, 21 *Jac.* and that long before this Bill exhibited, (*viz.*) 5 *July* 1670, in a Suit in the *Prerogative-Court*, commenced against him by the Children of the said *Everard* by *Charles Cornwallis* their Guardian,

dian, by the Sentence of that Court the Letters of *Administration* granted to the Defendant were *repealed*; and *Administration* was granted to the said *Cornwallis*, during the Minority of the said Children; and that they are still under seventeen Years, and neither they, or their Guardian made Parties to this Bill.

The Court allowed the Plea as to the personal Estate, but over-ruled it as to the real Estate.

John Bacon, *Plaintiff*.

Edward Clerke, *Defendant*.

Marriage-Agreement decreed to be performed, tho' the Wife dead without Issue.

THE Plaintiff upon his Marriage with *Anne*, who was the Defendant's Daughter, agreed to settle on her certain Leasehold Lands in the Bill mentioned, for the Benefit of her, and of the Issue of that Marriage; and in Consideration thereof, the Defendant was to give with her 1000*l*. for her Portion, which was to be laid out in Lands, and to be settled on the Plaintiff for Life, Remainder to his Wife for Life, Remainder to the Issue Male of that Marriage, Remainder to the Issue Female, Remainder to the right Heirs of the Plaintiff.

Accordingly the Defendant purchased the Farm of *H*, for which he was to pay 1721*l*. and the Plaintiff paid 721*l*. being Part of the Purchase-Money, so that there remained 1000*l*. more to pay, which being the Sum agreed to be laid out in Lands as aforesaid; and tho' the Plaintiff had settled his Leasehold Lands according to the said Agreement; yet now *Anne* being dead without Issue, the Defendant refuses to execute Conveyances of the said Farm, pretending that the Leasehold Lands were short of the Value agreed on; and that there were Incumbrances on them.

But it appearing, that there was no Defect in the Value, or any Incumbrances, but what the Defendant did know at the Time the said Agreement was made;

Therefore the *Lord Chancellor* assisted by *Judges*, decreed that the Defendant should execute Conveyances of the said Farm according to the *Marriage Agreement*.

*Heatherton or
Heathendon farm
in the county of
Somerset now the
estate of Sir Tho.
Gurston. p. 26.
17. May 1792.*

Sir William Jones, the Attorney General, on behalf
of the Governor of Christ's Hospital in London,
Plaintiff.

John Peacock and others, Defendants.

S.C. Hill. m. N. 300. 440.

*S. 1. 2. Dec. 167.
where null reported.
S. 1. cited 1. term.
225. see also 1.
Pro. Ch. 1. 12.*

Henry Fryer being seised of the Messuages and Lands in the Bill mentioned, of the Value of 400*l.* per Ann. settled the same to the Use of his Will; and afterwards by his said Will, he amongst other Things appoints several Charities, and the Surplus of his Estate he gave to the poor indefinitely; which Word Poor in common Construction extends to all the Poor in England; and therefore it would come to nothing, for which Reason Equity gives the Disposol of this Charity to the King.

Devise of a
Charity to
the Poor in-
definitely; in
such Case E-
quity gives
the Disposol
thereof to
the King.
By the Civil
Law this De-
vise would

be to the Poor of the Hospital of that Parish, where the Testator lived, and if no Hospital there, then to the Poor of that Parish. Dom. 2. Vol. 169.

After several Suits between Dr. Fryer, and the Executors of his Brother Henry the Testator, in the Court of Wards, King Charles II. undertook to accomodate the Matter, who ordered that great Part of the Estate given to Charity, should be enjoyed by the Doctor during his Life; but his Executors the Defendant Peacock and others, being now called on to adjust Accounts, and required to apply the Estate according to the Will of Henry Fryer the Testator;

It was decreed, that his real Estate should be conveyed to the Lord Mayor, Aldermen and Citizens of London, who are Governors of the 3 Hospitals, founded by King Edward VI. (viz.) Bridewell, Christ-Church, and St. Thomas's Hospital; and that they should receive the same, and apply the Rents and Profits to the Purposes expressed in the Will, and the Surplus (by the King's Directions) to the Benefit of the Children of the new Royal Foundation in Christ's Hospital, being forty Poor Boys therein, educated in a Mathematical School, and to learn the Art of Navigation.

The Tenants were decreed to surrender their old Leases, and to take new Leases for their remaining Terms.

William Duke of Newcastle, *Plaintiff.*

Mary Cleyton, *Widow, Defendant.*

Bill against
an Executrix
to perform
Articles
made by her
Husband in
which he
was bound
to pay 6000 *l.*
to the Plain-
tiff, who ac-
knowledged
the Receipt
of the whole,

viz. 4000 *l.* in Money, and the rest by a Conveyance of Lands, &c. but those Lands being settled on the Wife in Jointure, the Plaintiff exhibits a Bill against her for Performance of her Husband's Articles.

Decreed that the Plaintiff having acknowledged the Receipt of 6000 *l.* that is an Evidence of the Performance of the Articles, since the Plaintiff made no farther Demand for several Years; and 'tis unreasonable to put an Executor to prove a precise Payment after so long a Time.

Afterwards in the Year 1663, the Plaintiff made a Lease to *Cleyton*, pursuant to the said *Articles*, in which Lease *he acknowledges that 6000 l.* was paid or accepted as paid to the Plaintiff, by the said *Cleyton*, (*viz.*) 4000 *l.* actually paid, and the rest by a Conveyance of Lands; and it afterwards appearing, that there were several Mortgages and Incumbrances on those Lands, and that Part thereof were settled on the now Defendant in Jointure, the Plaintiff exhibited his Bill to have the *Articles* performed, and a Conveyance executed of Lands, &c.

But on the other side it appeared, that after the said *Articles* were made, there had been some Departure from the Agreement therein mentioned, and this was by Consent in the Year 1663, and it was concerning a Conveyance of the Lands as it was very reasonable so to be; because *Cleyton* having before settled those Lands in Jointure to his Wife, could not convey them to the Plaintiff.

Now there could not be any probable Reason assigned, why the Plaintiff in the Year 1663, should acknowledge the Receipt of 6000 *l.* when the *Articles* in 1660, mentioned only 4000 *l.* if the other 2000 *l.* was not to be satisfied by a Conveyance of Lands, which *Cleyton* knew he could not convey for the Reason before-mentioned, for the Plaintiff's Counsel did not pretend that he was to have 6000 *l.* and the *Articles* likewise to be performed.

Therefore the Lease which was granted by the Plaintiff in the Year 1663, ought to be taken as an Evidence of the Performance of the Agreement by *Cleyton*, the rather because he lived *three Years* after the making the Lease, and no Demand was made by the Plaintiff of any Conveyance from him, nor of his Wife the now Defendant, four Years after her Husband's Death, till the Plaintiff had exhibited his Bill to have such Conveyance; and now endeavours to set on Foot a *Recognisance* of 10000*l.* which *Cleyton* had given for the Performance of the said *Articles*.

Upon hearing this Cause, the Court was of Opinion, that the 6000*l.* paid in the Year 1663, was a full Satisfaction and Performance in Equity of the *Articles* in the Year 1660; and that it would be very hard (that since the Lands cannot be conveyed *in Specie*, by Reason of a former Marriage-Settlement) to set on Foot a Recognisance against an Executrix after such a Length of Time, and presumptive Satisfaction, and long Acquiescence.

That 'tis not reasonable to put an Executor to a precise Proof of the Payment of every Part of this 6000*l.* but that the Rental of the Lease, and the Plaintiff's Acknowledging the Receipt of the Money under his Hand and Seal, ought to be conclusive to him.

The Bill was dismissed.

Calcham, *Plaintiff*.

Spatman, *Defendant*.

THE Point in this Case was, whether one *Everard*, who was Bail for the Plaintiff against whom a Judgment was had, *quod computet*, should be allowed as Evidence for him in this Court; because he swears to discharge himself in Case the Plaintiff prove insolvent.

In Account the Judgment was *quod computet*, and the Bail in that Action was admitted as he was Bail.

Evidence in this Court for him, for whom

The Order was by Consent, that the Plaintiff putting in another Bail, *Everard* shall be allowed as Evidence as far as by Law he may.

Hill and his Wife, Plaintiffs.

Blankett and his Wife, and Rhodes, Defendants.

Orphanage
Part ac-
cording to
the Custom
of the City
of London,
decreed with
Costs.

THE Plaintiff's Wife being the Daughter of *John Rhodes*, a Freeman of *London*, who died possessed of a great personal Estate, and did not advance this Daughter in his Life-time; she and her Husband come here for her *Orphanage* Part according to the *Custom of the City*; which is, that the said personal Estate shall be divided into *three Parts*, one to the Wife, another to the Children unpreferred equally, and a third to the Executor or Administrator of the Husband; and this Bill was brought against the Widow, and against her Son, and against the Executor.

They plead a Custom, that if any Child under 18 Years, marry without the Father's Consent (as the Plaintiff did) such Child looses her Part.

The Plaintiffs reply, that after their Marriage, the Father and they were reconciled, and so the Plaintiff is now well entitled to her Part.

The Court ordered that the *Recorder of London* should certify by Word of Mouth, whether there was such a Custom as the Defendants had pleaded, who certify'd that there was not; thereupon the Court directed an Account; and that the Plaintiff *Mary* should be paid her Proportion, certified to be due with *Costs*.

I

Term.

Termino Paschæ.

28 Car. 2. Anno 1676.

Draper, *Plaintiff*.

Zouch, *Defendant*.

THIS Bill was, to have a Discovery and Delivery of certain old Deeds and Writings, which the Defendant hath got into his Custody concerning Lands, which the Plaintiff claimeth as Heir at Law to his Grandfather, who executed the said Deeds in the 13th Year of King James.

The Plaintiff claimed under a Person, who had been convicted and executed for Felony, &c.

The Counsel for the Defendant insisted, that the Plaintiff's Claim was under a Person, who was convicted and executed for Felony, by Reason whereof his Lands were forfeited to the King, and that the Defendant was in Possession for several Years under that Forfeiture, and therefore the Plaintiff ought not to be relieved.

But it appearing in this Cause, that the Ancestors of the Defendant had the said Deeds, and other Writings in their Custody, which concern the Lands now in Question; the Court would not dismiss the Bill, but ordered that it should be retained, to enable the Plaintiff and his Heirs to make Use of the Depositions therein at any Trial at Law, and the Defendant to have the like Liberty, and that the Plaintiff shall have Recourse to the *Records, Rolls* and Evidences of the Manor, in which the Lands now claimed lie, to view, peruse, and take Copies thereof, (paying for the same) and ordered, that the Defendant and his Heirs, Lords of the said Manor, should produce so many thereof at any Trial at Law, as the Plaintiff or his Heirs shall at any Time require to be produced, but at the Charge of the Plaintiff, his Heirs or Assigns.

Sir Thomas Abdy, Bart. Plaintiff.

Anthony Loveday and others, Defendants.

The Plaintiff had been in quiet Possession 16 Years, and now the Defendant set up a Mortgage and Recognisance, but there being no Proof to confirm either of them, both were set aside.

THE Plaintiff purchased certain Lands in the Bill mentioned, and he, and those under whom he claimed, had been in the quiet Possession thereof, ever since the Year 1659, and now the Defendant set up a *Mortgage and a Recognisance*, to incumber the Premises, against which the Plaintiff exhibited his Bill to be relieved; and there being no Proof either of the said *Mortgage or Recognisance*, in Order to confirm the same, but that both might be satisfied.

The Court decreed the Mortgage to be delivered up and cancelled, and the Recognisance vacated.

Mary Corbett, Widow, Plaintiff.

Sir Richard Franklyn, Defendant.

Legacy of 1000 l. laid out by one, who had the Care of the Legatee (being an Infant) otherwise than appointed by the Will, must be answered by him who so laid it out.

THE Lady *Elizabeth Northey*, the Plaintiff's Sister, being possessed of a considerable personal Estate, and amongst other Things of 1000 l. in the Hands of *Sir Robert Viner*, she by her last Will ordered, that the said 1000 l. should be laid out in a Purchase of Lands, or otherwise to the best Advantage; and that the Interest thereof should be paid to her Grandson *Sir Samuel Tryon*, for his better Maintenance, until the Defendant (her Brother in Law, and to whom she had committed the Care of her said Grandson) should purchase therewith some good Lease, Annuity, or Rent-charge for her said Grandson, during his Life; but if he died before the said 1000 l. was laid out in Lands, then 500 l. one half thereof, was to go to the Wife of the said *Sir Richard Franklyn* the Defendant, (who was her Grandaughter) and the other 500 l. to the Plaintiff, and made the Plaintiff and the Defendant her Executors, and died.

After whose Death the said Executors proved the Will, but in Pursuance thereof the Defendant alone received the 1000 l. of *Sir Robert Viner*, and afterwards *Sir Samuel Tryon* died before it was laid out as directed by the Will; and now the Defendant refused to pay a Moiety thereof (*viz.* 500 l.) to the Plaintiff.

Term. Trin. 28 Car. 2. Anno 1676. 251

The Defendant pretends, that the Money was all spent in Suits for Sir *Samuel Tryon* whilst he lived, and was under the Care of this Defendant, and otherwise for his Benefit.

But the Court was of Opinion, that the Defendant could not lay out the Money in any other Manner than such as was directed by the Will; therefore the Plaintiff is well intitled to the 500 *l.* and to Damages since the Bill, which amount to 560 *l.* and decreed the same to the Plaintiff in full for her Legacy and Interest.

Term. Sanct. Trin.

28 Car. 2. Anno 1676.

Sir Robert Harding, Exceptant.

Ralph Edy, *on the Behalf of the Poor of Hanley's Alms-house, and others in the County of Nottingham, Respondents.*

A Commission was granted to the Respondents, to prove the yearly Value of the Lands charged with the Charity in the decretal Order, which Commission was executed and returned.

A Commission granted, to prove the yearly Value of Lands charged with a Charity, &c.

It was now moved on the Part of the *Exceptant* for a new Commission, he pretending a Surprize in the former, and that he had several other Witnesses to examine, whom he could not then produce.

The Counsel for the Respondent insisted, that this Motion was made purely for Delay, it appearing by a *Certificate*, that the Commissioners sate four Days, and that all the Witnesses which the *Exceptant* produced, were examined, and that the *Exceptant* himself then declared, that he had no more to be examined.

But now the *Exceptant's* Counsel agreeing, that he should be concluded by another Commission; it was decreed accord-

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ingly,

ingly; and that if the Respondent shall not at this new Commission examine any Witnesses, other than to cross examine those produced by the Exceptant, then he the Exceptant shall be at the whole Charge of the Commissioners on both Sides, otherwise each to bear the Charge of his own Commissioners.

Christopher *Duke of Albemarle, Plaintiff.*

Elizabeth *Viscountess Purbeck, Defendant.*

An old Charge on an Estate, and of which there had been no Demand for 30 Years, was now decreed to be paid.

THIS Bill was, to be relieved against a Demand of the Arrears of an Annuity of 1000 *Marks per Annum*, amounting now to 4000 *Marks*, charged by the Duke of *Buckingham An. 20 Jac.* on his Manor of *Newhall*, and to be paid to the late *Viscountess Purbeck*, during the joint Lives of her and her Husband; that she died in the Year 1645, and her Husband died ten Years after her; which Annuity determining by her Death, there was then 4000 *Marks* Arrear, and that the Defendant had procured special Letters of Administration to be granted to her, to intitle her to the said Arrears, and therefore she demanded the same.

It was insisted for the Plaintiff, that it may reasonably be presumed there were no Arrears due, and that if there were any due at the Death of the said *Viscountess*, the same hath since been discharged, or might have been satisfied, because the now Defendant's Husband was a *great Favourite of the late Usurper's*, and had or might have Satisfaction for the same; and the rather, for that 'tis now 30 Years since the *Viscountess Purbeck* died, and no Demand hath been made thereof since her Death.

That the Plaintiff's Father, the late Duke *George*, in *October 1663*, purchased the said Manor and Premises for 28220 *l.* actually paid, without any Notice of the said Rent-charge, and that 'tis against Equity to charge a Purchaser for a valuable Consideration paid without Notice, &c.

That 'tis a Matter of ill Consequence for Charges or Estates to be suspended for so many Years, and afterwards to be arbitrarily charged upon the same, when and into whose Hands soever the same should come.

But the Court declared, that the said Arrears ought to be paid, and saw no Cause in Equity to relieve the Plaintiff, and therefore his Bill was dismissed, and the Defendant to be at Liberty to proceed, as he shall be advised, in Order to recover the said Arrears.

Fox, *Plaintiff.*

Frost, *Defendant.*

THE Plaintiff exhibited his Bill, to have an Account of the Gain and Profit of a Parcel of *Hops*, and to pay to the Plaintiff his Share and Proportion thereof; it being privately agreed between him and the Defendant, that they should be Copartners in buying and selling the said *Hops*, and to pay for them equally, and that either of them should give a true Account to the other; and the Plaintiff gave the Defendant 5 s. *in Hand*, to be paid as Earnest for the said Bargain of *Hops*.

Demurrer to a Bill, for that the Plaintiff's Equity is grounded on the Payment of 5 s. which is not sufficient for a Decree.

The Defendant answered, and denied the Partnership and Agreement, and the Receipt of 5 s. from the Plaintiff on any such Account, as suggested in the Bill.

And *demurs*, for that the Matter doth not concern the Plaintiff, and that his Equity, if true, is grounded on 5 s. which he paid as Earnest, which is not a sufficient Consideration to ground a Decree on.

The Court allowed the Demurrer.

Bartram, *Plaintiff.*

Dannett, *Defendant.*

THE Defendant having obtained a Dismission of the Plaintiff's Bill with Costs, prosecuted the Plaintiff to a Commission of Rebellion for those Costs, being 35 l. and in *Hillary Term* charged him therewith in Custody, where he remained a Prisoner likewise at other Men's Suits, till he was discharged by the *Act of general Pardon*, since which Act he was not prosecuted by the Defendant, nor any Means used to keep him in Prison; but being examined upon *Interrogatories* as to his Contempt in not paying the Costs, he pleaded the said *Act of Indemnity made Anno 25 Car. 2.* and the Plea was allowed; it being also alledged, that the Plaintiff was irregularly prosecuted and imprisoned on the Contempt, and on the 10th of *February* last it was ordered, that the *Master* should tax the Plaintiff his Costs.

An Attachment after a Decree for Dismission is in Nature of an Execution at Law, and a general Pardon may pardon the Contempt but not the Debt.

The Defendant finding himself aggrieved with that Order, now moved by his Counsel to have it discharged, and it appearing, that the said Plea was heard before the Defendant had any Notice that the Plaintiff appeared to be examined; and his Counsel

Counsel farther insisting, that an Attachment after a Decree for Dismission is in Nature of an *Execution*; and that tho' the *Act* might pardon the Contempt or Disability, yet it did not pardon the Debt.

The Court being of that Opinion discharged the Order.

Brend, *Plaintiff*.

Brend, *Defendant*.

The Father being seised of Freehold and Copyhold Lands, settled the same upon his second Son and his Issue Male, upon the Death of his eldest Son without Issue Male, and covenanted to surrender his Copyholds to those Uses; but instead thereof the Surrender was enter'd on the Roll to the Use of the Heirs general; this Surrender was vacated by a Decree, and a new Surrender made according to the *Settlement*.

SIR *Matthew Brend*, upon the Marriage of his Son *Thomas*, who was the Plaintiff's elder Brother, and late the Father of the Defendant, settled his Freehold and Copyhold Lands by one *Indenture Tripartite, &c.* to the Use of himself for Life, and afterwards to his Wife for Life, Remainder to the said *Thomas* for Life, and then to his Wife for Life, Remainder to the Issue Male of their two Bodies, Remainder to Trustees therein named, for 99 Years, to raise Portions for Daughters; if but one, then to raise and pay 3000 *l.* to her; if more than one, then the said 3000 *l.* to be divided amongst them, and to be paid at the Age of eighteen, or Marriage, Remainder to the Plaintiff (who was the second Son of the said *Sir Matthew*) for Life, Remainder to his Sons in Tail, and covenanted to surrender his Copyholds to the said Uses.

Thomas (who was the Defendant's Father) is dead without Issue Male, and *Smith* the surviving Trustee of the said Term of 99 Years, and the Daughters of *Sir Matthew*, have the Possession both of the Freehold and Copyhold, claiming the later as Heirs general of *Sir Matthew*, finding the Surrender thereof so entered.

But this being a Mistake, as it appeared upon a Trial, and Verdict obtained at Law, and it was contrary to the Intent and Design of the tripartite Indenture; the Plaintiff exhibited his Bill to have the Surrender vacated, and a new one taken and inrolled, pursuant to the said tripartite Indenture, by which the Inheritance of the said Copyholds, after the Death of *Thomas* without Issue Male, was to come to the Plaintiff and to his Issue Male; and there being a Proviso in the said Indenture, that the Person who should have the Inheritance in Reversion after the Determination of the Term for 99 Years, should with-

in one Year after the Commencement of the said Term in Possession, pay or secure the said 3000 *l.* Portion, and the Maintenance of 20 *l. per Annum* to each of the Daughters, till the same should become due; this could not be done, if the two Estates should be separated, because the *Freehold* of itself was not sufficient for that Purpose; therefore the Plaintiff offered, that if he might be let into the Possession of both the Freehold and Copyhold, he would not only pay the Arrears of Maintenance, but secure the Portion of 3000 *l.* to be paid when it should become due.

The Court decreed, that the said Copyhold Roll should be vacated, and that the *Surrender* of *Sir Matthew* should be inrolled according to the said *tripartite Indenture*, and pursuant to the said *Verdict*, and that the Plaintiff paying the said 3000 *l.* as it shall become due, and Maintenance of 20 *l.* in the mean Time, he the said *Smith*, the surviving Trustee of the Term, shall convey the Residue thereof to the Plaintiff, or to whom he shall appoint, free from Incumbrances by him, or by any claiming under him; and in the mean Time the Plaintiff shall hold and enjoy the Mansion-House and Premises, and receive the Profits thereof to his own Use; and the said Term for 99 Years, and the Judgment in Ejectment, which the Plaintiff hath given by Order of this Court, shall stand as a Security for the said Portion and Maintenance.

That *Smith* the Trustee shall give the Plaintiff a Letter of Attorney, to receive the Rents, and to sue for the same in his Name, the better to enable him to get the said Rents; and that if the Plaintiff should fail to pay the *future Maintenance*, and Portions as they shall become due, then the Injunction which is at present continued, shall stand dissolved; and in such Case the Plaintiff shall lie open to the Law, and to the Proviso by which he is to pay or secure the said Maintenance and Portion, within a Year after the Death of *Thomas Brend*, of which he hath already failed, but cannot in Equity be charged, because he was kept out of Possession by the Defendants.

Everenden and others, Plaintiffs.

Vanacker and others, Defendants.

THIS Bill was, to have a Discovery of the Defendants Title to several Lands therein mentioned, and of the Deeds, Writings, Dates and Contents thereof, and to examine Witnesses *de bene esse*, &c.

Bill to discover a Title, and to examine Witnesses *de bene esse*; the

Defendant pleads he is a Purchaser for a valuable Consideration without Notice, and demurs as to examine Witnesses, because 'tis against a real Purchaser, and by a particular Statute the Plaintiff may compel Witnesses to appear in any Court.

The

The Defendants plead, that they are Purchasers for a full and valuable Consideration of 7000 *l.* actually paid, and without any Notice of the Plaintiff's Title, and therefore ought not to make any Discovery of their Deeds, Writings, Dates or Contents, &c.

And as to Examining *Witnesses* they *demur*, for that the Court will not direct such Examination against a real Purchaser, but leave the Plaintiff to the usual Remedy, to evict the Defendant's Possession, if he can so do by Law; and for that the Plaintiff, notwithstanding his Pretences in the Bill, hath his Remedy by a particular *Statute to compel Witnesses* to appear in any Court at Law to give their Evidence, or to recover Damages against such Witnesses for not appearing.

The Court allowed both the Plea and the Demurrer, and that such Depositions which have been already taken *de bene esse*, should be suppressed.

Dr. Busby, *Plaintiff*.

The Earl of Salisbury, *Defendant*.

The Payment of a Rent, which had been discontinued for some Years, was decreed to be paid.

THE Plaintiff, as Treasurer of the Cathedral Church of *Salisbury* and Parson of *Marlock*, sued the Defendant for 5 *l.* *per Annum*, payable formerly by the *Abbes of Lyon* out of a Moiety, or some other Part of certain Tithes belonging to the *Rectory of Marlock*, which were vested in the Crown upon the Dissolution of Abbies, &c. and granted out again, and for many Years past had been Part of the Estate of the *Earls of Salisbury*, and now Part of the Defendant's Estate, and formerly by his Ancestors paid to the Predecessors of the Plaintiff till the late *Usurpation*; but that the now *Earl* conceiving, that in those tumultuous Times many of the Writings were lost (as in Truth they were) hath for 14 *Years* past, denied the Payment thereof.

The Defendant pleads, that he claims the Premises by Virtue of a Settlement which his Grandfather made upon his (the Defendant's) Marriage, and so he is a Purchaser, and that neither he or any of his Ancestors to his Knowledge ever paid the said 5 *l.* &c.

But the Court decreed both the Arrears and future Payment of the 5 *l.* yearly to the Plaintiff and his Successors for ever.

John Bridge, *Plaintiff.*

Thomas Hindall, *Defendant.*

THIS Bill was for a Discovery of the personal Estate of Sir Tobias Bridge, to whom the Defendant was Executor, and that he might be enjoined, *before he go beyond Sea*, to exhibit a true Inventory of his Testator's personal Estate, and to give Security to come to an Account concerning the same.

Bill against an Executor to injoin him to exhibit an Inventory, and to give Security to account before he go beyond Sea.

Demurrer, for that this Bill is to make an Injunction in the Nature of the Writ, *Ne exeat Regnum, &c.*

The Defendant *demurred*, for that the Plaintiff seeks to make an Injunction of this Court to be in Nature of a *Ne exeat Regnum*, which Writ is not usually granted but in Case of a publick and general Concern, and not where a Debt is owing to one Person, much less before there appears any Duty or Judgment given to ascertain the Debt; and this would be not only to alter the Laws of the Kingdom in that Respect, but likewise by compelling the Defendant, who is an Executor, to give Security, when at Common Law he is not to be held to *Bail*.

The Court allowed the Demurrer.

Hackett, *Plaintiff.*

Webb, and Willey and his Wife, *Defendants.*

THE Defendant Webb wrote a Letter to the Plaintiff Hackett, (who lived in Ireland) to demand Money of one Pitts there, and if he refused to pay it, then to arrest his Ship.

Pitts finding that Hackett the Plaintiff had Authority as aforesaid, deposited 100 l. in his Hands on these Terms, (*viz.*) that if upon adjusting Accounts between him and Webb, it should appear to be due to the said Webb, then to pay over the 100 l. to him, but if otherwise, then to repay Pitts so much as did not appear to be due to Webb, and accordingly the Plaintiff entered into a Bond conditioned as aforesaid.

Pitts and his Ship being now at Liberty, he proceeded in his Voyage, and died before he had adjusted his Accounts with

Webb, who sued the Plaintiff *Hacket* for the 100 *l.* and the other Defendant, as Administrator of the said *Pitt*, sued him likewise on the same Bond.

And now he exhibited a Bill, to know to whom he should pay this 100 *l.* being willing to pay it to whom it should belong, and for that Purpose he paid it into Court; and the Counsel for the Defendant, the Administrator of *Pitts*, insisting, that there were great Dealings between him and *Webb*, who both had Shares in the said Ship, and great Sums expended, and Losses sustained, of which *Webb* ought to bear a Share;

The Court decreed an Account; and in Regard the Plaintiff had behaved himself well in this Matter, it was ordered, that his Bond should be delivered up to be cancelled, and a perpetual Injunction as to him; and that his *Costs* should be paid by such Party as the Court shall think fit, before the said 100 *l.* be taken out of Court.

Sir Charles Hussey and others, Plaintiffs.

Sir Robert Markham and White, Defendants.

Bill to compel Trustees to accept a Trust, or to transfer or release, &c.

THIS Bill was, to enforce Trustees to accept a Trust, and to come to an Account; and that such of them who refused should transfer and release their Interest, which was decreed accordingly.

And that the Defendant *Sir Robert Markham* is willing to act in the said Trust, and offering to perform the same upon these Conditions;

ff. The Master to take his Account every Year for the Rents and Profits of the Estate, which actually came to his Hands, or to any of his Agents, and to allow him the *Costs*, and his Expences in accounting and calling others to account, and the Charges both at Law and Equity which he hath or shall expend, together with his *Costs* in this Suit.

Not to be chargeable with any Money, but what he, or others by his Order, shall actually receive; and not to be charged with any Loss in putting out Money at Interest, or for Money raised out of the Estate without his wilful Negligence or Default.

That if he, or any Bailiff or Agent under him should be robbed, or by any extraordinary Accident should lose the Money received, or any Bailiff, Agent, or Receiver should run away, or become insolvent, the said *Sir Robert* or his Executors, not to be accountable or chargeable therewith.

And

And that after the Account is stated, the same shall be final and conclusive, and not afterwards unravelled.
Decreed accordingly.

The Attorney General on the Behalf of Anthony Hammond, and the Churchwardens of Somersham in the County of Huntingdon, Plaintiffs.

Richard Hobert and Nicholas Johnson, Defendants.

ONE *Harvey* being seised in Fee of the Lands in the Bill mentioned, did settle the same on Trustees and their Heirs in Trust to repair a Stone-bridge in Somersham, and the Surplus of the Rents to repair the Church-way leading from the said Bridge to the Church; that some Inclosures and Improvements have been made of the Lands thus given in Charity; and the present Trustees having misapplied the Rents by repairing the Church therewith, it being not given to any such Purpose, and suffered the Houses (which were Part of the Charity) to be out of Repair and ruinous; therefore this Bill was brought to have the Effect of the Charity, and to bring the Trustees to account and to discover Deeds and Writings, and to have the Trust transferred to the Relators, &c.

Bill to bring the Trustee of a Charity to account, who had misemploy'd it.

The Defendants were decreed to account for what they had or might have received without their wilful Default, and to pay the same to the Relators, to be laid out on the Bridge and the Way, without Respect to any other Disbursements; and that the Defendants shall pay Costs.

Richard Kington, Plaintiff.

William Gale, Defendant.

THIS Bill was for a Discovery of a Deed and the Contents of it, in the Defendant's Custody.

Bill against an Attorney to discover

a Deed; he demurred, for that he was employed by his Client, and ought not to discover. The Demurrer over-ruled.

The Defendant demurred, for that he is an Attorney at Law, and was intrusted by his Client with the said Deed, and with

other Deeds and Writings, and therefore ought not to discover the same, or the Contents thereof, or any other Matters which came to his Knowledge, as he is an Attorney, and employed in the Affairs of his Clients.

The Court was of Opinion, that there ought to be a *Discovery*, and ordered the same accordingly, (*viz.*) whether there was such Deed or Deeds, and where the same is or are, and to whom delivered, and when he last saw the same, and in whose Custody; but not to produce or to discover the Dates or Contents thereof.

Busshell, *Plaintiff*.

Newby, Wakefeild *and others*, *Defendants*.

Where an Authority was given to two, the Defendant demurred, for that the Bill set forth the Deed was executed by one, and without Date, &c. The Demurrer over-ruled.

Nicholas Busshell (who was Grandfather of the Plaintiff) being seized of the Lands in the Bill, did by his last Will give Authority to his Son Brown Busshell, and to Dorothy his Wife, to dispose and convey Part of the Premises to provide Portions for his younger Children.

Nicholas Busshell died, and not long after the said Brown Busshell likewise died, and then Dorothy alone conveyed the Lands to George Scanderbey Busshell (who was the Plaintiff's Father) and to his Heirs for his Portion, and that he is now in Possession; but the Defendant as Heir at Law of Nicholas hath brought an *Ejectment*, &c.

This being the Case upon the Bill, the Defendant demurred, for that it appears by the Bill, that the full Power given by the Will of Nicholas was to his Son Brown Busshell, and to Dorothy Busshell jointly; and the Deed by which the Plaintiff claims was executed by Dorothy alone, which was not sufficient to divest the Defendant of the *Inheritance*, he being Heir at Law.

Besides, this Conveyance was set forth by the Plaintiff, but without Date, Day, Month or Year, and that he did not make Oath that he hath not Nicholas's Will.

The Court over-ruled the Demurrer, and gave the Plaintiff Leave to amend his Bill.

Sir Francis Hollis, Plaintiff.

Sir Robert Carr, Temple and others, Defendants.

UPON the Marriage of Sir *Francis Hollis* (the Plaintiff) with *Lucy Carr*, it was agreed by certain Articles made between the *Lord Hollis* of the one Part, and Sir *Robert Carr* (the Father of the said *Lucy*, and of the now Defendant Sir *Robert Carr*) of the other Part, that the Portion of the said *Lucy Carr* should be 6000 *l.* for securing which Portion the Lands in the Bill should, by *Fine* and other legal Assurance in the Law, stand charged.

without Issue before either was done; the Husband sued for the Portion, tho' no made, and it was decreed for him.

It was likewise agreed by the said Articles, that in Consideration of the said Marriage. &c. other Lands likewise in the Bill mentioned should be settled in Jointure upon the said *Lucy*, and upon the Issue of that Marriage, which did afterwards take Effect.

Afterwards the said Lady *Lucy* died without Issue, and her Portion was not paid, nor any Lands settled to secure the Payment thereof, as it was agreed by the said Articles.

Therefore the Plaintiff Sir *Francis Hollis* exhibited his Bill, to have an Execution of the said Agreement.

It was objected by the Counsel of the now Defendant Sir *Robert Carr*, that this Portion ought not now to be paid, because it was to be upon Consideration of a Jointure to be settled by the *Lord Hollis* (the Plaintiff's Father) upon the Lady *Lucy*, which was never done, neither could it be done of the Lands agreed by the Articles so to be settled, in Case the said *Lucy* had been living, because some of them were conveyed away to other Persons, so that the Plaintiff's Father was disabled to perform the Agreement on his Part, and therefore the Agreement on the Defendant's Part ought not to be performed.

But the Court decreed, that the 6000 *l.* should be paid to the Plaintiff with Interest, or in Default of such Payment, then the Lands agreed by the Articles to stand as a Security for the Payment thereof, shall be possessed by the Plaintiff till 'tis paid; and that tho' Part of the Lands agreed by the *Lord Hollis* to be settled in Jointure were conveyed away, and the Rest of the said Lands were not settled in Jointure, yet that was not the Plaintiff's Fault, because his Father had given Security that it should be done, if the Lady *Lucy* had lived.

Berrington,

Berrington, *Plaintiff.*

Mason, *Defendant.*

Trustee de-
creed to ac-
count.

THE Plaintiff exhibited a Bill, to discover a Trust of Lands therein mentioned, suggesting, that tho' the same had been in the Possession of the Defendant and his Ancestors for the Space of 20 Years and upwards, without any Claim, and tho' several Sums of Money were paid to his Father as a Consideration; yet the Conveyance of those Lands was only in Trust, that after those Sums and some other Debts were paid, that then the Persons to whom his Father conveyed the same, and under whom the Defendant now claims, were to stand seised of the Premises to the Use of his said Father and his Heirs.

This appearing to be true upon a Trial, and a Verdict obtained by the Plaintiff upon an Issue directed out of this Court;

It was decreed to an Account, and that upon Payment of what was due to the Defendant, he should reconvey to the Plaintiff and his Heirs.

Sir John Bennett and other the Creditors of Ambrose Bennett deceased, Plaintiffs.

Sir Richard Ingoldsby, Robert Hampson, Esq; and others, Defendants.

Estate de-
creed to be
sold to satisf-
fy Debts, &c.
and all Par-
ties to join.

THE Creditors of *Ambrose Bennett* exhibit their Bill to have a Sale made of his Estate, pursuant to a Deed made by him in the Year 1671, by which he settled the same upon certain Trustees, to be sold for Payment of his Debts, and which his Heir at Law and the said Trustees do obstruct, pretending that they have not sufficient Power to sell, and the Heir that he hath some Statutes and other Securities with which the Lands are chargeable; and the Wife of the said *Ambrose* pretends, that she hath a Jointure in them prior to all other Incumbrances, but is willing to accept 2000*l.* in lieu thereof; and that one *Bulstrode*, from whom the Estate was originally purchased, knowing that the Writings were casually burnt, refuses to execute a *Release* for the Satisfaction of the Purchaser.

Upon the whole Matter the Court decreed the Estate to be sold, and the contending Parties to join, that the Creditors may

be

be satisfied (excepting the Jointure of the Wife, or 2000 l. in lieu thereof) and with the Money arising by such Sale, (after the Charge and Expences of the Trustees deducted, and just Allowances made to them) to satisfy the Debts in equal Proportions, as far as the same will extend; the Trustees to be indemnified, and such Securities which the Creditors have for their respective Debts, to be delivered up to the Purchaser.

The Lady Wentworth and others, Plaintiffs.

Clay, Jefferies, Hall, and others, Defendants.

*J. l. Nottingham.
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report here.*

THE Lady *Wentworth* being Lady of the Manor of *Stepney*, exhibited a Bill to establish an Usage and Custom within the said Manor, ever since the Reign of *H. 8.* which was, that the Lords of the said Manor might, upon the Presentment of 7 of the Copyholders thereof, determine what Waste Ground was fit to be set out and inclosed, in Order to build on the same; and such Presentment being agreed unto by the major Part of the Homage at the next Court, the same was set out and inclosed accordingly, without any Molestation or Disturbance by the Tenants.

There is a custom in the manor of Hampstead, in Middlesex, similar to that which is the subject of this case. Some years ago, an enclosure under this custom in Hampstead Heath by Mr. Levingham the

That such a Presentment was made in Manner as aforesaid, of several Parcels of Waste Ground to build on in *Mile-end Green*, where, since the great Fire, Filth and Carrion had been usually laid, to the great Annoyance not only of some of the Tenants, but of all others passing that Way.

act was controverted by him in an action brought in C. B. This action was tried before the Justice of the Peace, who in his charge expressed an opinion, that the custom was good. But afterwards from Mr. Serjt. Hill, that the verdict was given in favor of Mr. Levingham, on the ground of the enclosure's being no damage to the commoners, who disputed with Mr. Levingham the ground in a Court appearing to have been a mere ground pit before the enclosure.

That this Presentment was allowed by the major Part of the Homage at the next Court, and which is now sought to be established by a Decree of this Court, the rather because 'tis opposed by some of the Tenants of the said Manor, who have brought Actions, &c. pretending, tho' very untruly, that they have a great Loss of Common by setting out and inclosing such Ground.

That by Indenture dated 15 June 15. *Jac. Thomas* Lord *Wentworth*, in Consideration of 3500 l. paid to himself, and of 3000 l. more to his Father, *Henry* Lord *Wentworth*, did grant and confirm to the Tenants their Privileges and Customs, and particularly the Commons which they then enjoyed, with Liberty to dig Gravel, Clay or Loam, to repair or build any of their Copyhold Tenements, and covenanted for the quiet Enjoyment against him, his Heirs and Assigns.

In Newman v. Newman 2. Hills. 125. select Cas. in That Chanc. 62. To further the matter v. Glemmett 5 D. 1. East 417. note.

That the Reason why no Disturbance of this Nature hath been hitherto given is, because there was never any such Inclosure for building, under Pretence of such an Usage and Custom till now.

Upon reading of several Court-Rolls of the said Manor from the Reign of *H. 8.* till the Reign of *Car. 2.* relating to the said Usage, and hearing all Parties, the Court

Decreed, that this was a reasonable Usage, and fit to be established, and that the Plaintiff hath proceeded according to the Usage in procuring the said Waste-Ground called *Mile-end Green*, to be set out, presented and allowed by the Homage, and inclosed as aforesaid, and so had Power to grant Leases and Estates thereof at her Pleasure to be inclosed, and kept in Severalty, &c.

Abram Bullen *an Infant*, Matthew Dale *his next Friend*, Plaintiff.

John Allen Clerk, and Mary *his Wife*, Defendants.

Legacy decreed to be paid to an Infant, but without Interest.

THE Plaintiff being an Infant, exhibited his Bill for a Legacy of 100 *l.* devised to him, &c. the Defendants by their Answer say, that they are and always were ready to pay it, so as they might be discharged and indemnified for so doing, which the Plaintiff, by Reason of his Infancy could not do, and therefore they insisted, that it might be paid *without Interest*.

It was decreed accordingly, and the Defendants to be indemnified.

Hawkins and others, Plaintiffs.

King and others, Defendants.

Debt recovered by Assignees of Commissioners of Bankrupts, decreed to

THE Plaintiffs are Creditors of a Bankrupt, but *Hawkins* the Plaintiff was the principal Creditor, and they all complain against the Defendants, who were Assignees of the Commissioners; for that they have recovered Judgment for 331 *l.* be distributed amongst the Creditors.

of

Term. Mich. 28 Car. 2. Anno 1676. 265

of the Bankrupt's Estate in the said *Hawkins's* Hands; whereas the said *Bankrupt* was indebted to him in 700 *l.* and that *Hawkins* and some other of the Creditors are willing to take their Proportion of the said 331 *l.* whose Debts are now in Danger to be lost, if the whole should be received by the Defendant *King* and others, Assignees, &c. who had obtained the said Judgment; and therefore they exhibited a Bill for Relief.

The Defendants demurred, for that there is no Equity in the Bill to change the Law, by which the *Assignees* are enabled to recover the Bankrupt's Estate, and there is no particular Charge in the Bill that makes the Demands of the Assignees unreasonable.

The Court decreed, that *Hawkins* should prove his Debt before the Commissioners, and pay to the Defendants their Proportion of the said 331 *l.* and *Costs* to be distributed to them respectively.

Term. Sanct. Mich.
28 Car 2. Anno 1676.

Foord, *Plaintiff.*

Lear and Key, *Defendants.*

THE Bill was, to be relieved against several Bonds, Bills, and Specialties, which the Plaintiff had given to the Father of the Defendant, and to the Defendant *Key*, but in Trust for the Defendant's Father; all which, as he suggests, were paid and satisfied in the Father's Life-time, and therefore ought to be delivered up to be cancelled.

But one *Meriton* by his *Counsel* appeared, and shewed an Assignment made to him by Commissioners of Bankrupts of these Bonds and Specialties, he the said *Meriton* being a Creditor to *Lear*, against whom a Commission of Bankruptcy was sued out, and he found a Bankrupt, and those Bills and Specialties Part of his Estate; and thereupon he objects against any Decree to be made till he is made a Party and heard.

Which was ordered accordingly, and the Cause to be speeded; and if the Plaintiff delay, then the Injunction formerly granted against the Defendant to be dissolved.

M m

Richard

Richard Peacock, *Plaintiff*.

Samuel Neale, *Defendant*.

Bill to discover a Title to a Term for Years; the Defendant pleads that he is seised in Fee of the Inheritance

THE Plaintiff claims a Title to the Lands in Question by a Grant of the Reversion and Inheritance thereof to *T. S.* (after a long Term of Years granted to the Defendant) from which *T. S.* it descended to him; and prays a Discovery of the Defendant's Title, and by what Deeds and when the said Term for Years was first granted.

upon a valuable Consideration, and hath been in quiet Possession for 50 Years, &c.

Possession is naturally limited to the Property, and it implies both a Right and a Fact, (*i. e.*) a Right, to enjoy annexed to the Right of Property; and the Fact, (*i. e.*) the Detention of the Thing; but if Property is not joined to the Possession at first, yet 'tis acquir'd by a long Possession, which by the civil Law was 30 Years; and a Right thus acquired is grounded upon this Presumption, that he who enjoys it hath some just Title, otherwise he had not been suffered to enjoy it so long. *Dom. 1 Vol. 484.*

The Defendant, as to the Grant of any Term for Years, pleads, that he is seised of the Fee-simple and Inheritance of the Premises by several Conveyances for valuable Considerations, and that by Virtue thereof he (this Defendant) and those under whom he claims, have been possessed and quietly enjoyed the Premises for 50 Years.

The Court allowed the Plea, but that the Plaintiff might reply, and proceed as he should be advised.

Joseph Latchwell and Anne his Wife, *Administratrix of John Bartholomew deceased, Plaintiffs.*

Richard Foster, *Defendant*.

Bill to discover a Debt the Bond being lost; the Defendant pleads the Statute of Limitations, &c. and demurs, for that the Plaintiff did not make Oath the Bond was lost, &c.

THE Plaintiffs Intestate (as it was suggested) and the Defendant came to an Account for Beer and Ale delivered by the Intestate to the Defendant, who owned himself to be Debtor to him in 46 *l.* or thereabouts, and that he gave some Bond or Bill for the same, which is now lost; but that the Defendant hath promised Payment to the Plaintiffs; and now he exhibited his Bill,

to discover the said Dealings, and that Payment may be made of the Money due on the said Bond or Bill.

The Defendant pleaded the Statute of Limitations 21 *Fac.* no Action being brought against him for any the Matters in Question within *six Years* after the Cause of Action did arise, the said Intestate having been dead 9 *Years* and more, as it appeared by the Plaintiff's own Shewing.

And he demurred, for that the Plaintiffs have not made Oath before the Commencement of this Suit, that the *Bond, Bill*, or other the Writing mentioned in the Bill, is or are lost, and cannot be found.

And the Court allowed both the Plea and Demurrer.

John Windham, *Esq;* Plaintiff.

William Windham, *Esq;* Defendant.

T *Thomas Windham* (the Father of the Plaintiff) having by his last Will made Provision for his Children by Name, did by the same Will declare, that he did give and bequeath to every other Son and Daughter which he should afterwards have by his Wife *Elizabeth Windham* 1000 *l.* apiece, to be paid such as should be *Daughters*, at their Age of 18 *Years*, and to such as should be Sons, at their Age of 21 *Years*.

A Decree of a Legacy to an after-born Child. By the civil Law Children unborn may be made Heirs or Executors, not on-

ly by their Parents, but by any Person; they are likewise capable of receiving Legacies, or any other Benefit made by a Will. *Dom. 2 Vol. 16.*

The Testator lived three Years after the making this Will, and in that Time had Issue, the Plaintiff *John*, by his said Wife *Elizabeth*; and in *January 1653*, after the Birth of the said *John*, (the Plaintiff) he with his own Hand added another Clause to his Will, by which he appointed his Executors to raise 4000 *l.* out of the *Fines, Rents* and Profits of his Manors of *Worle, &c.* in the *County of Somerset*, for the Portion and Benefit of his said Son *John*, whom he called his *little Infant*; and afterwards he republished his said Will about three Days before his Death; and having sent for one *Corbett* a Parson to administer the Sacrament to him; and to a Question then proposed to him by the said *Corbett*, he answered, that he had settled all his Affairs, and that he had given the Plaintiff *John* 5000 *l.* whom he then called his *little Benjamin*.

The Counsel for the Defendant objected, that *John* the Plaintiff ought not to have the 1000 *l.* for that would be to have a double Portion, and by a very strange Construction of the Will, (*viz.*) to have one Portion as a *Child born*, and another as a *Child unborn*.

But the Court was of Opinion, that the Plaintiff was intitled as well to the 1000 *l.* as to the 4000 *l.* and decreed the Defendant to pay the same accordingly with *Costs*.

Thomas Laurence *and* Cornwell Hetley, *Plaintiffs*.

Thomas *and* Richard Doughty, *Defendants*.

The Plaintiffs claimed under a Fine and Recovery, and

THE Plaintiffs claim a Title to the Lands in Question, under a *Fine and Recovery*, and a Deed to lead the Uses thereof.

Deed to lead the Uses; the Defendant demurred, for that such Fine and Recovery were never levied; and for that the Plaintiff did not alledge that the Parties to the Deed of Uses were seised or possessed, &c.

The Defendants demur, for that the Plaintiffs have not made out any Title to the Lands, or to any Part thereof, for that the *Fine and Recovery* set forth to be levied and suffered, was never levied, &c. and for that the Plaintiffs by their Bill did not alledge that the Cognisors, or Cognisees, or any other Parties to the said Deed were at the Time of making thereof, or at any Time since, seised or possessed of the Lands in the Bill, whereby to enable them to make and execute such an Assurance as in the Bill; so that the said Bill is very uncertain and insufficient in those Particulars thereof, whereby any Relief or Discovery is sought.

The Court allowed the Demurrer with *Costs*, and that the Plaintiff may mend his Bill as he shall be advised.

Thomas Love *and several others, on the Behalf of themselves and of the Poor of the Parish of Kell-hall in the County of Suffolk, Plaintiffs.*

Eade, Garnham, Wright *and several others, Defendants.*

THIS Bill was, to discover what Rents and Profits the Defendants have received, who act as Feoffees in Trust, on Behalf of the said Parish, by a Grant, as 'tis pretended, of former Trustees, on whom Lands of 100 l. *per Annum* were settled by several pious and well disposed Persons, for the Repair of the Church, and for the Use of the Poor of the said Parish; and that the Defendants have misemployed the Trust, and have converted great Part of the Profits to their own Use; and now pretend there was no such Trust, and have made several Leases and Estates of the Lands given to this Charity; and refuse to come to an Account with any of the *substantial Parishioners*, but only with the meaner Sort, with whom they insinuate and share the Profits; and have broke open the Parish Chests, and have taken out and do conceal the Deeds and Writings concerning this Charity, for which some of them have been indicted; therefore the Plaintiffs pray, that the Defendants may produce those Writings, and come to an Account, and that the Trust may be transferred, which tho' they answer and deny, and offer to account;

Feoffees of a Charity given to a Parish having misemployed the Rents, &c. were decreed to account, and to transfer the Trust.

Yet the Court decreed an Account, and the Trust to be transferred to such Persons as the *Judge of Assise* shall nominate; and that the Account of the Rents and Profits be for six Years past; and that all the Deeds and Writings shall be delivered to such Persons, whom the *Judge of Assise* shall appoint to be Feoffees, and the Executors of such of them who are dead, shall come into the Account, and the Arrears shall be paid to the new Trustees, and Conveyances executed to them accordingly.

George

George Rosser, *Plaintiff*.

Sir Herbert Evans *and* Elizabeth Morgan *Widow*,
Defendants.

THE *Bishop of Landaff* being seised of a Tenement in the Bill mentioned in Right of his *Bishoprick*, did in *March* 1663, demise the same to *William Morgan* for three Lives, who entered and was seised during his Life.

After whose Death the Plaintiff *Rosser* first enter'd, and was seised as *Occupant*, and Sir *Herbert Evans* (the Defendant) having gotten the original Lease in his Custody, made a Title to this Tenement, and threatened to cancel it, and to take a new Lease from the Bishop, against which the Plaintiff now prayed Relief.

The Defendant demurred, for that the Plaintiff in his Bill did not aver, that the said Lives, or either of them, for which this Lease was to continue, were then in Being, (*viz.*) at the Time of the Death of *William Morgan*; and that this Court doth not countenance the Title of an *Occupant* against a Purchaser for a valuable Consideration.

The Court allowed the Demurrer, but without *Costs*, and dismissed the Bill.

Roland Oakover, *Esq;* and Elizabeth his Wife, an
Infant, by her said Husband and next Friend,
Plaintiff.

The Lady Elizabeth Pettus, *Widow* of Sir Thomas Pettus, Sir John Massum, *Baronet*, John Pettus, *Baronet*, Robert Haughton, *Esq;* and William Stratford, *Gent.* *Defendants*.

A Trust decreed, and a Deed to be fraudulent against Creditors.

THE Bill was, to perform a Trust for raising 5000 *l.* for the Plaintiff *Elizabeth Oakover*, who was the Daughter and Heir of Sir *John Pettus* deceased, and to set aside a Writing purporting his Will, and several other Deeds, by which the Defendant the Lady *Elizabeth Pettus*, claimed several Lands of the said Sir *Thomas* her late Husband, and all his personal Estate; all which were declared and intended by him to be in Trust for the Plaintiff his only Daughter.

The Defendant the *Lady Elizabeth Pettus* having pleaded those Deeds and Will by which she claimed the Premises, and that she ought not to account; and the Plaintiffs having replied that the said Deeds were all *intended and agreed to be in Trust* for the Daughter; and that the Will was not to be used against her; for that her Father either made no such Will, or if he did, that he *revoked* it; and a Trial being had by Order of this Court, whether the said Writing was the Will of Sir *Thomas Pettus* her Father; and the Plaintiff in the Action having obtained a Verdict that it was not his Will, and now resorting back to this Court, upon Consideration had of the Case on the several Deeds, and being assisted by *Justice Windham*;

The *Lord Chancellor Finch* declared, that all the Conveyances of the Lands which the Defendant had got from Sir *Thomas Pettus* her Husband, were in Trust for the Plaintiff *Elizabeth* his only Child, and that her Father always declared, that she should have the Premises, and all other his Lands, which were not settled upon the Heirs Males of the Family; and that the Defendant did some Time after the Death of her Husband, own some of the Lands (not in Jointure to her) to be the Lands of the said *Elizabeth* her Daughter, and caused the Tenants to attorn to her; and that the Defendant was but her Guardian, and as such had received the Rents; and it appearing, that the Defendant had not any Estate or Interest but in Trust for her Daughter the Plaintiff;

It was decreed, that the *Will* should be set aside, since a Verdict had passed against it; and that the surviving Trustees mentioned in the Deeds should assure and convey the Lands to the Plaintiff *Elizabeth*, or to whom she should appoint; and that the *Lady Pettus* should convey to her and her Heirs, all the Lands which her Husband Sir *John Pettus* had conveyed to her the said *Lady*, in Trust for her Daughter the Plaintiff *Elizabeth*, &c.

And as to a Deed set up by the said *Lady*, made by the said Sir *Thomas* her late Husband, and dated 8 Feb. 1668, by which he gave all his Goods, Chattels and Household-stuff to the Defendant Sir *Robert Houghton*, for the Benefit of the said *Lady*; the Court declared, that it was *fraudulent* against his Creditors, not having Assets without the same to satisfy his Debts; and that notwithstanding the said Deed, he the said Sir *Thomas* continued in the Possession thereof during his Life; and that since this Deed was made, the Defendant the *Lady Pettus*, admitted it to be a Trust, because she had exhibited an Inventory of the said personal Estate into the Spiritual Court.

Therefore the Court was likewise of Opinion, that this was a Trust for the Administrator of Sir *Thomas*, and to be applied in the first Place for Payment of his Debts, and afterwards to give an Account thereof to such *Administrator*, when he shall appear.

John

John Pattenon, *Gent. Plaintiff.*

Dorothy Thompson *Widow*, Christopher Thompson, *who is the Son of the said Dorothy, by his Guardian*, and Anne Thompson *Widow*, *Defendants.*

Copyhold mortgaged, but the Mortgagor died before he made a Surrender; decreed, that his Son an Infant shall Surrender.

THE Plaintiff lent *Adam Thompson*, Father of the Defendant *Christopher*, 60 *l.* Part whereof, (*viz.*) 40 *l.* was to discharge him out of Execution; and to secure the Repayment thereof, the said *Adam Thompson* mortgaged the Lands in the Bill, Part whereof was Copyhold.

The Mortgagor agreed to *surrender the Copyhold Lands*, but died before it was done; and thereupon the Defendants set up prior Titles, to keep the Plaintiff out of Possession; particularly *Dorothy Thompson* the Widow of *John Thompson*, the Son of *Adam*, the Mortgagor, pretended a Settlement made thereof to her in Jointure, upon her Marriage with the said *John Thompson*, which was by Way of *Covenant to stand seised*; in which the Mortgagor covenanted that he had not nor would convey or transfer his Interest in the Premises to any Person whatsoever, except to his said Son *John Thompson*, and to his and her Heirs; and that they should have the present Possession of a Moiety thereof; and that if she survived *John*, then she to enjoy that *Moiety* during her Life; so she now claims the same as a Purchaser for a valuable Consideration, and not as a voluntary Conveyance; and that the same is precedent to the Title of the Plaintiff.

The Court being satisfied, that the Debt due to the Plaintiff was a just Debt, and that *Adam* the Mortgagor was discharged out of Execution with Part of the Money, that in such Case the Plaintiff ought to have all the Relief the Court can give him.

Therefore it was decreed, that all the Premises shall stand charged with the said *Debt and Interest* from the Time it ought to be paid, and that the Defendants or their Tenants attorn to him, and deliver him the Possession of the Premises, (*viz.*) of one Moiety during the Life of *Dorothy*, and that after her Decease the Plaintiff shall enjoy the other Moiety to him and his Heirs, against the Defendants and all claiming under them, unless the Defendants shall, at such Time and Place as the Master shall appoint, pay to the Plaintiff his Principal, Interest and Costs, &c. and in Default thereof the *Infant Christopher Thompson*, when of Age, shall make a good and sufficient Surrender of the Copyhold to the Plaintiff and his Heirs, according to the Custom of the Manor, unless within six Months after his Age he shall shew to this Court good Cause to the contrary.

Edmund Smith, and Mary his Wife, one of the Daughters of Ralph Ashton, Esq; deceased, and Elizabeth, Hester and Sarah Ashton, three other of the Daughters of the said Ralph, and Infants, by their Guardian, Plaintiffs.

Beatrix Ashton, Widow of Richard Ashton, who was Son and Heir of the said Ralph, and Richard Ashton, an Infant, Son and Heir of the said Richard, by his Mother and Guardian, Defendants.

J.L. 1. Freeman. 300. 1. Cha. Car. 264. 1. M. R. Case 204. 1. 323.

Ralph Ashton being seised in Fee of the Lands in the Bill, did by Deed Anno 22. Car. 1. settle the same upon himself for Life, and afterwards to the Use of Mary his Wife for Life, Remainder to the Heirs Males of his Body, to be begotten on the Body of the said Mary, Remainder to his own right Heirs: **Provided** that he might, by any Writing under his Hand and Seal, charge the Premises, and his Heirs Males with the Payment of such Sums of Money out of the same as he should appoint, so as the whole exceeded not 500*l*.

The Father by a Marriage Settlement, had Power to charge Lands with 500*l*. for Portions for his Daughters; he prepared Notes in Writing, purporting

his Will; and declared that those Notes were the Effect of his Will, but died before it was drawn up in Form, and before it was executed; this was decreed to be a good Execution of his Power.

The said Ralph Ashton being likewise seised in Fee of other Lands in the Bill, expectant upon the Death of his Mother, of the yearly Value of 60*l*. per Ann. lying in *Cheshire*; and having Issue the said Richard his eldest Son, and five Daughters, (*viz.*) Mary and her three Sisters (the Plaintiffs,) and one Anne since dead; and intending to make a Provision for them by Deed, and out of the Premises, he in the Year 1665, prepared Notes in Writing, which he declared should be the Effect of his last Will; and which were (as he called them) Instructions for his Counsel to draw up his last Will in Form; and the better to enable him so to do, he together with the said Notes sent to his Counsel the Deed concerning his *Yorkshire* Lands, and another Deed concerning his *Cheshire* Lands; and thereupon his Counsel did draw a Writing, and had the same engrossed, leaving Blanks for the Names of the Trustees, by which Writing the said Ralph Ashton did grant to the said Trustees, and their Heirs, the Reversion after the Decease of Katharine his Mother, of the third Part of the Manor

According to the last Will of Ralph Ashton deceased, that if he did not live to the end of his life, his notes should be drawn up and sealed.

of *Lea alias Womblea in Cheshire*, to the Use of the said *Rich. Ashton* for four Years next, after the Decease of the said *Katharine*, towards the Payment of so many of his Debts, as his personal Estate should fall short to satisfy; Remainder to the said *Richard* and his Heirs; and that if he did not pay his said Daughters Portions, then the Remainder to him to be void, and that the Trustees should sell the *Cheshire Lands*, and with the Money arising by the Sale thereof, should pay the Portions as far as it would go; and if that should not be sufficient, then he charged the said *Richard* and his Heirs Males with the Payment of the Residue out of his *Yorkshire Lands*, so as the same did not exceed 500 *l.* according to the true Meaning of the said Deed.

Which being drawn and engrossed as aforesaid, he the said *Ralph Ashton* died before it was methodically drawn into a Will, by reason of the Blanks left for Trustees, or before he executed the same.

And now the Daughters having exhibited a Bill for their said Portions, their Counsel insisted for them; that by these Instructions the Lands were charged *in Equity* with the said Portions; and that the Trust thereof ought to stand and be supported by this Court, and that the Heir of the said *Ralph Ashton* on whom the said Lands are descended, ought to stand seised thereof, and take the same charged with the Payment of the said Portions to his Sisters; and that though he *died before the Writing was signed and sealed*, yet that ought not to turn to the Prejudice of the Plaintiffs, he being prevented by sudden Death to execute the same; and that *Anne* being dead, the Plaintiff ought to have her Proportion.

The Defendant *Beatrix* claims the Premises by a Marriage-Settlement with *Richard*, the Son of *Richard Ashton*, without Notice of the said Instructions; and *Richard* the Infant, Son of the said *Richard*, claims under the said Marriage-Settlement, and are both in Nature of Purchasers; and therefore that the said *Instructions* ought not to affect them; and that being *Voluntary* and neither a Will, or Deed, or Trustees named, and not executed, ought not to be supplied in Equity against an Infant, especially since the *Cheshire Lands* are the only Support and Maintenance of the Defendants.

But the Plaintiffs having obtained a *Verdict for the Will*, upon a Trial directed out of this Court, the *Lord Chancellor* declared there was a good Execution of the Power by *Ralph Ashton*, notwithstanding the Writing was not sealed by him, and that the *Notes* were a clear Demonstration of his Intention.

Therefore he decreed, that the *Cheshire Lands* should be sold for raising the Portions, and if they fall short, then to be made up out of the *Yorkshire Lands*, and the Defendant *Beatrix* to join in the Conveyance; and the Heir at Law likewise to convey

when

when of Age, unless he within six Months after shew cause to the contrary; and that the Possession of the Premises be delivered up to the Plaintiffs by the Defendants till such Sale, which if they do, then they shall be quit of an Account, for the mean Profits till that Time.

Term. Sanct Hill.

29 Car 2. Anno 1676-7.

Sir Richard Temple, Bart. Plaintiff.

Anne Viscountess Baltinglafs, Defendant.

SIR *Arthur Throgmorton* being seised of the Land in the Bill, did upon the Marriage of *Sir Peter Temple*, (the Plaintiff's late Father,) with *Anne* the second Daughter of the said *Arthur*, by Deed dated 22 June, 12 Jac. and Fine then levied, convey the said Lands to *Edward Lord Wootton*, and others, and their Heirs, in Trust, to the Use of the said *Sir Arthur* for Life, Remainder to *Anne* his Wife for Life, Remainder to *Sir Peter Temple* and *Anne* his Wife, and to the Survivor of them for Life, Remainder to the Issue of that Marriage in Tail Male, Remainder to the * *Issue Female*, Remainder over.

Bill to supply a defective Execution of a Power to make Leases, &c. The Defendant pleaded, that on a special Verdict at Law, Judgment was given, that the Bill dismissed.

the Leases were void; the Plea was held good, and the

* Which was the now Defendant *Anne* the Lady *Baltinglafs*.

With a Power for them the said *Sir Peter* and *Anne*, at all Times during their Lives, to make *Leases of the Premises*, (which had been leased) for 21 Years or under, in Possession, and not in Reversion, or for any other Number of Years, determinable upon one, two, or three Lives, reserving the Rents then usually paid, or more, unto such to whom the Premises should come by Virtue of the said Settlement, so long as they should pay the Rent, and commit no Waste.

Sir *Peter* had Issue by the said *Anne*, two Daughters, *Anne* and *Martha*, which said *Martha* died in her Minority, and *Anne* the now Defencant survived; Sir *Arthur* and *Anne* his Wife died, then Sir *Peter* entered, and *Anne* his Wife died in September 3 Car. leaving Issue the said *Anne*, the Defendant as aforesaid.

Afterwards Sir *Peter* married *Christian Lezstone*, one of the Daughters and Coheirs of Sir *John Lezstone*, by whom he had Issue, the Plaintiff Sir *Richard Temple*, his only Son and Heir; and afterwards the said Sir *Peter*, by Virtue of the said Power in Marriage-Settlement with his first Wife, made the Leases of the Premises to *Gowder* and *Hellier* for Ninety-nine Years, determinable on three Lives, under several yearly Rents and Reservations, and which were said to be in Trust for Sir *Peter* for Life; and afterwards to the Plaintiff Sir *Richard*, who was his eldest Son; and the Trustees accepted the same accordingly.

Sir *Peter* died, and now the Plaintiff Sir *Richard Temple* cannot make out his Title, because the Defendant *Anne* hath got the said Settlement in her Custody, and hath either cancelled or disposed it to some other Person; and now threatens to bring Ejectments, because the half Year's Rent due at Michaelmas 1653, next after Sir *Peter*'s Death was not paid to the Defendant *Anne*, at the Day and Places appointed by the said Leases, and according to the Power reserved in the said Settlement; whereas the Plaintiff being then a Minor, caused the same to be tendered on the Day, or as soon after as he had Notice of the Limitation; therefore he now exhibited a Bill to be relieved against any defective Execution of that Power given in the said Settlement, and against the Defect in not tendering the Rent.

The Defendant *Anne Lady Baltinglass* pleads, that in February 1674, a Bill was exhibited by *Gowder* and *Hellier* against her late Husband, and against her this Defendant, concerning some Leases now mentioned in the Plaintiff's Bill, and to have them made good, and concerning the said Deed of Settlement, and other ancient Leases; and after an Answer, and Witnesses examined on both sides, the Defendant's Husband died, whereby the Suit abated, this was in the Year 1662, and the Cause was revived and heard in November 14 Car. 2. and then decreed, that the Defendant and all claiming under her, should admit a Copy of the said Proviso, as the same was set forth in the Plaintiff's Bill, and certified by a Master, and filed in this Court, and allow the same as Evidence, at any Trial at Law which should be had concerning the Premises; and should also admit, that there was such a Deed of Settlement, and such Power as aforesaid, and that the Writings then in the Master's Custody should be perused by either of the Parties.

And pleaded, that Sir *Richard Temple* had Notice of the said Suit, and solicited the same, and managed it as being his own particular Interest, and by his said Trustees examined Witnesses concerning the whole Matter; and ought not now to examine Witnesses in his own Name, to the same Matter again; and that the now Plaintiff Sir *Richard Temple* rested upon that Decree, and had the Benefit thereof, and went to a Tryal of his Right at Law; and a special Verdict was found, wherein the Validity of the Leases, under which the Plaintiff claims, came in Question; and thereupon after several Arguments at the Bar, the Court of Common Pleas delivered their Opinion, that the Leases were void, and Judgment was given for the now Defendant.

And as to that Part of the Bill which prayeth a Relief against the Defect of a *Tender* of the Rent, at the Time it became due, it was insisted for the Defendant, that the Title of the Plaintiff is not upon a better or more valuable Consideration than the Title of the Defendant, and his Interest being derived from a *Power to make Leases* under such Conditions and Limitations as therein expressed, which Power being not pursued the Leases are void; and therefore according to the Rules of Equity, ought not to be supported by this Court contrary to a Judgment given against them at Law; and some of the Premises leased were not such as were usually in Lease; and none of the Leases were made pursuant to the Power for that Purpose reserved; and that the Defendant ever since the Death of *Sir Peter Temple*, hath been in Possession of the Premises, except the Parsonage of *Thornborough*, which was sometime with-held from her, but since recovered; and as to the Deeds and Writings, the Defendant hath been examined on *interrogatories*, and denied that she had them.

The Bill was dismissed with 5*l.* Costs.

Elizabeth Solly, *Widow, Plaintiff.*

John Whitfeild, *Gent. and Rebecca his Wife,*
Defendants.

Stephen Solly, upon a Marriage between him and the Defendant *Elizabeth*, and in Consideration of 500*l.* which she brought as her Portion, settled an *Annuity of 50*l.* per Ann.* on her during her Life, issuing, and to be paid out of several Lands, &c. which Lands he afterwards mortgaged to one *Jaques*, the Fa-
An Annuity was settled on the Wife by way of Jointure, afterwards she and her Husband
joined in a Fine to mortgage Part of the Lands out of which the Annuity issued; and the Mortgagee had Notice of this Annuity: decreed, that by joining in this Fine, she had not extinguished her Annuity.

ther

ther of the Defendant *Rebecca*; and prevailed with the said *Elizabeth* to join with him in a *Fine* of *Part* of the mortgaged Lands, to him the said *Jaques*, by which it was insisted by the Defendants, and as their Counsel would have it, that she had *extinguished her Right to the Annuity*.

Therefore the Heir of the Mortgagee, the Defendant *Rebecca*, and her Husband refused to pay this *Annuity*; but upon reading some Proofs, and producing Deeds, it appeared, that *Jaques* the Mortgagee had Notice of this *Annuity* before his *Mortgage* or Purchase; and that it was excepted in the Mortgage; and that it was never intended she should *extinguish this Annuity* by joining in the said *Fine*.

Therefore the Court decreed upon a Bill brought to have the said *Annuity* of 50 *l.* settled on her as aforesaid, that the same should be paid for the future, and the Arrears thereof.

Thomas Pigg, *an Infant*, by his Guardian,
Plaintiff.

William Coldwell, Clerk, and Thomas Edwards,
Defendants.

Devise of
Lands to one
for 7 Years,
on Condi-
on that with-
in that Time
he pay all
the Testa-
tor's Debts;
and after-
wards the
Fee-simple
was devised
to Thomas
the Plaintiff,
and if he
died without
Issue, then to
the Devisee
for 7 Years,
and his Heirs;
he did not
pay the Debts
within that Time;
but decreed that he
should pay them,
and that the Plaintiff
might amend his Bill
and add proper Parties.

THE Grandmother of the Plaintiff being seised of the Lands in the Bill, &c. whereof Part was Freehold, and Part *Copyhold*, (the *Copyhold* being in Mortgage to the Defendant *Coldwell*) she devised all the said Lands together with all her personal Estate to the Defendant *Edwards* for seven Years, upon Condition within that Time to pay her Debts; and afterwards she devised the Inheritance of the said Freehold Lands to the Plaintiff *Thomas* the Infant, at the Age of *twenty-eight Years*, he proving himself to be the Son of *Thomas Pigg* her Son, and of *Dorothy* his Wife; and after his (the Plaintiff's) Decease without Issue, then she devised the said Freehold Lands to the Defendant *Thomas Edwards* and his Heirs, and her *Copyholds* to one *Alice Throgmorton*, until such *Proof*; and after such *Proof*, and the Plaintiff *Thomas Pigg* dying without Issue, then to the said *Alice Throgmorton* her Heirs and Assigns for ever.

The *Testatrix* died, and *Edwards* the Defendant entered and proved the Will, but did not discharge the said Mortgage, nor several other Debts of the said *Testatrix*, by reason whereof the Plaintiff

tiff was likely to loose the Benefit of the said Will, and to want Maintenance.

Therefore he exhibited this Bill to have a Discovery of the Debts, and of the real and personal Estate of his Grandmother, and an Account of what *Edwards* hath received; and that the Debts might be paid, and particularly the Mortgage, and that the Plaintiff might be let into the Copyhold Estate.

It was decreed, that *Edwards* should come to an Account, and should discharge the Mortagage, and that the Mortgagee should afterwards assign the same to the Plaintiff; but because there were several others named in the Defendants Answer, to whom the *Testatrix* had devised her said Lands until the Plaintiff come to the *Age of twenty-eight Years*, and they being not made Parties to the Bill; therefore the Court ordered that they should forthwith be made Parties, and the Bill amended as to that Matter, &c.

George Warman, Plaintiff.

Aldred Seaman, John Pratt, and Mary Leving,
Defendants.

UPON the hearing this Cause in *Michaelmas-Term*, the Court referred it to several *Judges* to have their Opinion before any Decree was made; and it coming to be now heard, and the *Judges* having given their Opinion as to the Points to them referred, the Case appeared to be thus.

Devise of a
Trust of a
Term for
Years to one
for Life, and
afterwards to
his Issue,
Remainder

over: decreed, that this Remainder is void; and that upon the Death of the Tenant for Life, the whole Term vests in the Issue; and that if such Issue die without Issue and intestate the Residue of the Term vests in his Administrator.

ff. *Nathaniel Burton* being seised of the Lands in the Bill mentioned, did by Deed dated 4 *Jan. 6 Car.* on his Marriage with *Julian*, the Daughter of *William Warman*, grant the said Lands to the aforesaid *Wm. Warman* and *Julian* for 100 Years, upon Trust, that the said Term and Estate should be settled on the said *Nathaniel Burton* for his Life; and afterwards upon the said *Julian* and the Issues of their two Bodies; and for Default thereof, to the Issue of the Body of *Julian*; and for want of such Issue to *Robert Warman*, and to *George Warman* the Plaintiff's Father, who survived the said *Robert*.

Wm. Warman and *Julian*, in Execution of the said Trust, did about 4 Days afterwards assign the Premises to *Geo. Penrose* and *Tho. Warman*, in Trust, that they should permit the said *Julian* to

to receive the Profits thereof during her Life; and that after her Death, they should assign the Premises, and all their Right, Title and Interest therein, to the *Issue of the Body of the said Julian*, by the said *Nathaniel* to be begotten; and in Default thereof, to the *Issue of the Body of the said Julian*, and for want of such Issue to the said *Robert* and *George Warman*, and to the Survivor of them.

Afterwards *Nathaniel Burton* married the said *Julian*, and soon after died without Issue, and then *Julian* married again with one *John Hobbs*, by whom she had Issue *Eleanor Hobbs*; then the said *John Hobbs* and *Julian* died, and *Eleanor* survived, and afterwards died Intestate; and *Mary Living*, the Defendant took out Administration, who conveyed the said Term to the other Defendant *Pratt*, who conveyed to *Seaman*.

The Plaintiff as Son of *George Warman*, who was the surviving *Cestui que Trust* of the Term, in Case *Julian* died without Issue; and likewise *Administrator de Bonis non*, &c. of *William Warman*, and of *Julian*, claims the Premises, and an Assignment thereof, and an Account, &c.

The Defendant *Seaman's* Title, who was the last Purchaser from *Pratt*, and the Consideration was 1700*l.* insists that the Benefit of the whole Term did in Equity attach and vest in *Eleanor as the Issue of Julian* upon her Death; and that after the Decease of *Eleanor* without Issue and intestate, it ought to go to *Mary Living* as her Administratrix, under whom the Defendants *Pratt* and *Seaman* claim, which Administration to *Eleanor*, was granted to the said *Mary Living*, and she assigned the Premises long before Administration of the Goods of the said *Eleanor* was granted to the Plaintiff *George Warman*, under which he claims; and that the Remainder over to him is void.

The Court declared, that the last Remainder of the Trust of this Term, under which the Plaintiff claimed, is good, because the Trust was not to *Julian and her Issue*, by way of immediate Gift, which would have been Words of Limitation, and like an Entail; but the Trust was to her for Life, and afterwards to her Issue, which must be intended by way of Remainder; for in that Case the Word *Issue*, is a Word of a Purchase, and can carry no more than an Estate for Life, as in * *Wild's Case*, where those Words, (*viz.*) And after their Decease, and their Children, were adjudged by all the Judges of *England*, to be Words of Purchase, because they work by way of Remainder, and carry but an Estate for Life; for in Law the Word *Issue or Child* of it self imports no more.

And no Agreement can be drawn from the Intention of the Donor, because in all Probability, his Intention may agree with the Law; and it seems that it could not be otherwise, because if there had been twenty Issues of the Body of *Julian*, all must have

* 6 Rep. 16.
Moor 397.
1 And. 43.
S. C.

have taken together equally; therefore they could not take by way of *Entail*.

Neither could they be *Joint-tenants for Life of a Term with several Inheritances*; and though a Term is entailed with several Remainders over, such Entail ought to be made void, as tending to a *Perpetuity*; yet to make an Entail by Construction, and so to destroy a *Remainder* without any Necessity, this seems very hard; therefore the Defendants were decreed to assign the Premises to the Plaintiff.

But before the Decree was enrolled, the Court upon the Petition of the Defendant *Seaman*, signed by his Counsel, reheard the Cause, assisted by the *Master of the Rolls* and *Judge Rainsford*; and upon reading of some Offices, *Post Mortem* of the said *Nathaniel* and *Julian*, and the said original Lease, and the Assignment and Trust therein declared, and the Conveyances made to the Defendants, who were Purchasers of the said Term and Estate; the *Lord Chancellor* declared, that the Circumstances of this Case seemed otherwise than insisted on by the Counsel, for the Plaintiff, at the former Hearing; and it appearing, that the original Lease, and the Assignment had never been discovered or heard of till 1660, and that Possession had not gone with them till the Year 1661, but that the Possession which the said *Julian* and *Eleanor*, and the Father of the Plaintiff had, was under other Conveyances made by the said *Nathaniel Burton*, subsequent to the said Lease and Assignment; and though there was a small Rent reserved on the said Lease, it did not appear that any had been paid; but it was plain that the Defendant *Seaman* was a Purchaser for a valuable Consideration of 1700*l.* actually paid; thereupon the Court thought fit to consider the said Trust, as it was limited in the Assignment to *Penrose* and *Warman*, and that *Judge Rainsford* and the Master of the Rolls should be attended with the said Lease and Assignment, to consider of it, and to deliver their Opinions upon this Question.

¶ Whether *Eleanor* had by the Trust only an Estate for Life, and that the Residue of the said Term of 100 Years, ought on on her Death to go to the Plaintiff's Father by Virtue of the said Trust; or whether the whole Term did, by the Death of *Julian*, vest in *Eleanor*, and on her dying *Intestate* ought to go to her Administrator.

And *Mr. Justice Rainsford*, having consulted several of the Judges upon that Question, delivered his Opinion in Words to this Effect.

¶ That by the Declaration of the Trust, the Benefit of the whole Term unexpired at *Julian's* Death, did attach and vest in *Eleanor as her Issue*, and not only an Interest or Estate for Life; and that upon her Death, the whole Remainder of the said Term ought to go to her Administratrix.

His Reasons were, because by the exprefs Declaration of the Trust concerning the Residue of the Term, which should be in Being at the Death of *Julian*, 'tis directed, that the Trustees upon Request shall assign all their *Right and Title* to the Lands, &c. to the *Issue of Julian*; which Words *Right and Title* must necessarily contain and take in all the residuary Term, so that *Eleanor, as Issue of Julian*, is entitled in Equity to the whole remaining Term.

That if the Trust had been executed to *Eleanor* in her Lifetime, according to the Declaration thereof, then the Residue of the Term must have been assigned to her, therefore it being vested in her, and she dying before the Execution of the Trust, it ought to go her Administratrix.

That the Limitation of the Trust over to *Robert and George Warman* is void in Law, because 'tis not to take Effect, but for want of *Issue of Julian*; and this in Supposition of Law, is a *Limitation in Perpetuity*; for the Word *Issue, ex vi termini*, is *nomen collectivum*, and takes in all Issues to the utmost Extent of the Family, as the Word *Heirs of the Body* would do; and therefore the Law looked on it as a foreign and too remote a Possibility, that *Julian* should die without *Issue*, during that Term according to *Wild's Case in the 6 Rep.* where it was resolved, that a Devise being to the Father and Mother, and after their Deaths to the *Children*, there the word *Children* shall be a Name of *Purchase*, and not a *Limitation*, and they shall have but an Estate for Life; but had it been to their *Issues*, (as 'tis in this Case) that word *Issues* would have been construed a Word of *Limitation*, and not of *Purchase*; for so it was lately resolved in the *Exchequer-Chamber*; and a Judgment given in the *King's Bench* to the contrary, was reversed upon the Authority of *Wild's Case*.

But such a Construction ought not to be in this Case, as it was in *Wild's Case*, (*viz.*) that the *Issue of Julian* should have only an Estate for Life; because 'tis contrary to the exprefs Declaration of the Trust of the whole Remainder of the Term to the *Issue of Julian*; and the Judges ever since *Matthew Manning's Case*, have not favoured executory Estates and Limitations of Terms for Years over, but rather have made Constructions against them to keep them within due Bounds, and to prevent the Danger of Perpetuities.

Now in this Case, to make the Limitation over to the two *Warmans* Goods, there must be a strained Construction in the two Particulars following.

ff. As to the Estate to the *Issue of Julian*, (*viz.*) that it should be only *for Life*, which is expressly contrary to the Trust declared; secondly as to the Limitation over to the *Warmans*, (*viz.*) that it should take Effect, not as the Trust directs for want of
Issue.

Issue of Julian in general, (according to the Extensiveness of that word *Issue* in Construction of Law) but only after *Eleanor's* Death, tho' she should leave Issue, which is not agreeable to the Rules of Law in the like Cases.

Lastly, If the *Limitation* of the Trust to the *Issue of Julian* had been in exprefs Words for the *Life of such Issue*, yet the Limitation over to the *Warmans*, being by the Trust for want of *Issue of Julian in general*, it would not mend the Plaintiff's Case, but that such *Limitation* over would be void; for so it was decreed in this Court by the *Lord Chancellor*, assisted by three Judges in a Cause between *Peirce* and *Reeves*, 22 Feb. Anno 13. Car. 2. which hath been produced by the Counsel of the Defendant.

This being the Opinion of *Judge Rainsford*, afterwards the *Lord Chancellor* declared, that he had considered the same, and the Reasons thereof, and was satisfied, that the Remainder of this Term limited to *George Warman*, the Father of the Plaintiff, was void; and that the Residue of the whole Term unexpired at *Julian's* Death, did in Equity, upon her Death, attach and vest in *Eleanor*, and on the Death of the said *Eleanor* Intestate, ought to go to her Administrator; for the Resolution in *Wild's* Case, upon which he grounded his former Opinion, would not hold, if instead of *Children*, the word *Issue* had been in that Case; and that when the Judges of the *King's Bench* had lately held otherwise, and fallen into the like Error, their Judgment was for that very Cause reversed, (as it hath been already observed) in the *Exchequer-Chamber*.

Therefore the Court discharged the former Decree, and the Counsel for the Plaintiff not insisting on any Title he had to the Lands in Question under the said *Eleanor*, it was ordered that the Bill should be dismissed.

But before the Order of Dismission was entered, the Plaintiff petitioned to be heard on the Point of *Administration* to the said *Eleanor*, he alledging that it was an Omission of his Counsel not to insist thereon at the last Hearing; so the Cause was set down to be heard on that Point.

On which Hearing, the Counsel for the Plaintiff insisted, that the said *Eleanor* was the Daughter of *John Hobbs* and *Julian* his Wife, and was born and died at *Barnstaple* in *Devonshire*, and that the Plaintiff *George Warman* had taken Administration of her Goods as *dying there*, by reason whereof he is in Equity entitled to the Residue of the said Term; and that the Administration granted to *Mary Leving*, (under which the Defendants claim) tho' prior in Time, yet it was of the Goods of *Eleanor Hobbs*, late of *Stogurzy*, in the County of *Somerset*, another Person, the Daughter of one *Tho. Hobbs*, who was born and died at *Stogurzy*, and was no way entitled to the said Term.

Objection that the Administrator is not rightly named in the Administration over-ruled.

But on the other side it was insisted by the Counsel of the Defendant, that *Eleanor* the Daughter of *John* and *Julian Hobbs*, being an Infant, and in *Ward* to the late King, and the Wardship granted to *Edward* and *Thomas Hobbs*, dwelling in *Stogurzy*, she was by an Order of the late Court of *Wards* delivered to the Custody of the said Committees, with whom she lived some Years at *Stogurzy*, and being sickly, was about ten Weeks next before her Death carried to *Barnstaple*, where her Grandfather lived; and this was in order to recover her Health, where about eight Weeks after she died; however, in the Administration granted to the said *Mary Leving*, she is truly and properly said to be late of *Stogurzy*, and that the said *Mary* was *Cousin Germain*, and next of Kin to *Eleanor Hobbs*, of whose Goods she took the Administration, but was not next of Kin to *Eleanor Hobbs*, the Daughter of *Tho. Hobbs*, who Anno 1660, (when Administration was granted to the said *Mary*,) had a Brother and three Sisters, who are all yet living; and therefore the Administration granted to *Mary*, cannot be applied to *Eleanor* the Daughter of *Thomas Hobbs*, nor to any other but to *Eleanor* the Daughter of *John* and *Julian Hobbs*, who is plainly described in it.

Thereupon the Court declared, that there was no Colour for this Question; and therefore the Bill was dismissed.

John Seymour, *Plaintiff*.

John Tyndall, &c. *Defendants*.

The Plaintiff decreed to redeem a Mortgage after a Release of the Equity of Redemption.

THE Bill was, to redeem Lands mortgaged to the Defendant by the Father of the Plaintiff, and tho' the Father had released the Equity of Redemption upon taking up more Money of the Mortgagee; yet it appearing by Letters, Papers, and other Proofs, that he offered a Redemption, and to take his whole Principal and Interest; the same was decreed accordingly, and an Account directed.

Matthew

Matthew Lister *and* Sarah his Wife, *Plaintiffs.*

Richard Lister, *Esq;* *and* Matthew Lister, *Gent.*
Defendants.

THE Plaintiff made a Title to some Houses in the *Strand*, settled on him and his Wife, by his Uncle Sir *Matthew Lister*, of which Houses the Plaintiff was in Possession; but his Occasions calling him beyond Sea, and requiring his Stay there some Time, he left the Deed of Settlement with his *Brother*, who afterwards was a *Prisoner in the Fleet*; and there the Deed was burnt in the great Fire, of which the Defendant's Father, (who was Cousin and Heirs of Sir *Matthew*) took Advantage, and entered and enjoyed the said Houses for several Years; and now when the Plaintiff returned, he refused to account, and to deliver the Possession, pretending there was never any such Deed of Settlement.

One who entered without a Title. decreed to account.

This being the Case, the Court directed a Trial at Law, to try whether there was such a Deed of Settlement; and a Verdict was found for the Plaintiff, that there was such a Deed, since which Time the Tenants attorned to him; and now he comes upon the Equity reserved for an Account of the mean Profits.

The Counsel for the Defendants objected, that the Plaintiff having obtained a Verdict at Law, he hath the same Remedy there for the mean Profits, as he had for the Estate it self:

To which the Counsel for the Plaintiff answered, that the Houses were in Lease to one *Rust*, by Sir *Matthew Lister*, under whom both the Plaintiff and Defendant claim, which Lease expired at *Michaelmas* last, and not before; and that the Plaintiff could make no *Entry*; for if he had, it would have extinguished the *Rent* during that Lease; that the Defendant having no Title, was in Nature of a Bailiff or Receiver, and ought to account with the Plaintiffs; otherwise they can have no Remedy during the Lease to *Rust*.

The Court decreed the Defendant to account for the Rents and Profits, from the Time of his Possession to the Time of the Expiration of *Rust's* Lease, and to satisfy and pay the same to the Plaintiff.

John

John Shipton, *Gent. and Lucy his Wife, the Daughter of Sir Toby Tyrrell, Bart. Plaintiff.*

Sir Thomas Tyrrell, Defendant.

Where Lands are charged with the Payment of a Sum in gross, they likewise are in Equity, chargeable with the Interest of such Sum.

SIR *Edward Tyrrell*, the Grandfather of the Plaintiff *Lucy*, did by Deed, dated 12 *Novemb.* 14 *Car.* 1. settle the Manors and Lands in the Bill, on Trustees, amongst other Things, for raising and paying the Money which his Son *Toby* should owe at his Death, not exceeding 1000*l.* together *with Interest for the same*, with a Power given to the said *Toby* to raise Portions for his younger Children; and appoint the same either by Deed or Will, and that the Trustees should raise 2000*l.* for his said Grandaughter *Lucy*.

Sir Edward died, and after *Sir Toby* came to the Estate, he made two Settlements, and by the first amongst other Things, he confirmed the said 2000*l.* to be paid to the Plaintiff *Lucy* for her Portion; and by the second, which was made upon the Marriage of the Defendant *Thomas* his Son with the Daughter of *Sir Hen. Blunt*, and 4000*l.* paid as her Portion he recites, that with 2000*l.* Part thereof, the said *Lucy's* Portion, was paid; and by the same Deed he made a Provision for the Payment of his Debts, which should be owing at his Death to the *Value of 1000l.* but mentions nothing of the *Interest*, as it was in the first Settlement made by his Father.

But before he executed this last Settlement, he pressed his Daughter *Lucy* the Plaintiff, that he might keep her said Portion of 2000*l.* in his Hands, for which he would be accountable, and likewise for the *Interest* thereof; and importuned her to give him a *Release* for it, that so his Lands might be discharged thereof, and he the more capable of making this last Settlement on his Son's Marriage as aforesaid, which for the Advancement of her Brother the Defendant, she did consent unto, and gave such a *Release* as aforesaid.

Not long after this last Settlement, *Sir Toby* made his Will, (*viz.*) in *October* 1670, and thereby charged the Payment of this 2000*l.* on his personal Estate, and made the Plaintiff *Lucy* *residuary Legatee*, and *Sir Robert Cotton and others, Executors*, and died.

Afterwards the Creditors of the said Testator combining with *Sir Thomas Tyrrell* (the Defendant) to lay the Load of the Debts on the *personal Estate of Sir Toby*, to defeat the Plaintiff of her 2000*l.* have for that Purpose commenced Suits against the

Execu-

Executors, for that there is no *Interest* of the 1000*l.* Debt expressed in the last Settlement.

The Counsel for the Plaintiff argued, that the first Settlement takes Notice thereof; and that by the last Settlement, all the Portions in the former are released, except the Power to charge the said Lands with 1000*l.* Debt and 2000*l.* Portion, by which Exception the Power in the first Settlement of charging the Lands with 1000*l.* Debt, and 2000*l.* Portion is continued, and in full Force, and the Operation thereof is not to be abridged by any general Expressions in the last Settlement; and 'tis reasonable that the Lands charged with the Payment of Debts, should stand charged with the Payment of *Interest* for the same.

The Court was of Opinion, that by the last Settlement, the real Estate is liable to pay the *Interest* as well as the Principal; and decreed, that whatsoever of the personal Estate shall be lessened by Payment of Interest for the said 1000*l.* that the real Estate settled by the said Deed is and shall be liable to make good the same.

Anne Wolmer, *Widow and Administratrix of*
Wicksted Wolmer, *Plaintiff.*

Skevington Bendish, *Defendant.*

THIS Bill was, to have the Benefit of an extended Statute of 1600*l.* to be re-extended upon some other of the Lands in the Bill, on which (as the Plaintiff therein alledged) the Defendant had some Incumbrance.

Bill to have
a Statute re-
extended;
the Defen-
dant pleads
the former
Extent, and
an Inquisiti-
on and Libe-
rate, and
held good.]

The Defendant pleads, that on the 30 *May* 15 *Car. 2. Sam. Spalding*, the surviving Conusee of the said Statute, sued out an *Extendi facias* against the Cognisor *Anthony Wolmer*, directed to the Sheriff of *Cambridgeshire*, by Virtue whereof an *Inquisition* was found, and a *Liberate* sued out by the said *Spalding*, to have some of the Lands in the Bill delivered to him, which were delivered accordingly, which *Inquisition* and Proceedings are filed in this Court; and then that Defendant avers, that the Statute of 1600*l.* in the Bill, and the Statute mentioned in the Extent, are one and the same; and therefore he demands the Judgment of this Court, whether he shall be compelled to make any farther Answer.

The Court allowed the Plea.

Sir

Sir John Maynard, Plaintiff.

Oswald Mosely, Esq; Defendant.

SIR *Edward Mosely* being seised in Fee of Lands in *Leicestershire*, did on his Marriage with the *Lady Grey*, settle the same on her for Life for her Jointure, and by his Will in the Year 1665, devised the said Lands after the Death of his said *Lady*, to the first Son of his Sister *Maynard in Tail Male*, Remainder to *Nicholas Mosely for Life*, Remainder to the Defendant *Oswald Mosely in Tail*, and afterwards the said Sir *Edward* died without Issue.

After whose Death, the Plaintiff and the Defendant *Oswald Mosely* came to an Agreement concerning these *Leicestershire* Lands, which was;

That *Nicholas* and the Defendant should convey that Interest and Possibility, which they had by the Will, to the Plaintiff and his Heirs, which by Lease and Release was accordingly done; and thereupon the Plaintiff agreed to pay to *Nicholas* and the Defendant 600*l.*

But in regard the Lands were limited to the *Lady for Life*, Remainder in Trust as aforesaid; so that if the *Lady* would not consent, a *Common Recovery* could not be had, without which the Plaintiff could not have a good Title to the Remainder; a farther Agreement was thereupon made between the Plaintiff and *Nicholas* and the Defendant *Oswald Mosely*, that the Plaintiff should pay the said 600*l.* within one Month next after *Easter-Term* ensuing, tho' a *Common Recovery* was not then had; and if it was not then had, or that the Remainders so limited, as aforesaid, should not be well and sufficiently barred within 3 Years then next after; that in such Case the said *Nicholas* and the Defendant, their Executors and Administrators should repay unto the Plaintiff the aforesaid 600*l.* and Interest, upon his reconveying the Estate in Remainder to them; and they gave a Bond to the Plaintiff in the Penalty of 1200*l.* to repay the same accordingly; thereupon the Plaintiff in *Hillary-Term* 1665, paid the said 600*l.* and afterwards he endeavoured to get a *Common Recovery* to be suffered, and for that Purpose solicited the *Lady* to become Tenant to the *Præcipe*, which she refused; so that it was impossible for the Plaintiff to accomplish the same.

That one *Anne Mosely*, by a Decree of this Court made in November 1668, had recovered the said Lands against the Plaintiff and *Nicholas Mosely*, by Virtue of a Will of old Sir *Ed. Mosely*, the Father of Sir *Edward* the Testator; so that the Plaintiff who had paid the 600*l.* never had any Estate from *Nicholas*, or *Oswald Mosely*

Mosely, and by Consequence could not reconvey to them what he never had; but yet in Equity he is entitled to have the 600*l.* again, and the rather because he is ready to do any act to reinstate the Defendants according to his Agreement with them.

And *Nicholas* hath made the Defendant his Executor, or he hath taken out Administration to him, and so is liable to make Satisfaction to the Plaintiff out of his personal Estate, which is, or hath been possessed by him (the Defendant) and tho' a Penalty is limited for Non-payment of the 600*l.* yet *Nicholas* in his Lifetime, threatened that if the Plaintiff sued him at Law, he would sue the Plaintiff in this Court; and that he (the Plaintiff) had Reason to expect the like Proceedings from the Defendant; to prevent which, he (the Plaintiff) hath exhibited this Bill, that he may be paid the said 600*l.* with Interest and Costs.

On the other side the Defendants by their Counsel insisted, that the Deeds and Evidences of Sir *Edward Mosely's* Estate, together with his Will, were in the Possession of the Plaintiff, or of Mrs. *Anne Mosely*; and that in *December 1665*, the Plaintiff desired this Defendant, and his said Father *Nicholas*, that they would convey unto him the Possibility they had by the Will to the *Leicestershire Estate*; and they refusing, he the Plaintiff threatened to compel them to do it; and that at last they were prevailed on so to do, for which the Plaintiff was to give 600*l.* and accordingly the Plaintiff prepared a *Lease and Release* which was executed by this Defendant, in which *Release* the Defendant covenanted to suffer a *Common Recovery* in the next Term, if the Plaintiff could prevail with the *Lady Mosely*, to grant or surrender her Estate for Life, or as soon after as that could be done, and the Plaintiff undertook to prevail with her to join in the said *Recovery*; and the Defendant relying upon the said Promise, did in that Term come from *Lancashire to London*, in order to suffer the said *Recovery*, which could not then be done; because the Plaintiff had not procured the *Lady Mosely* to consent.

That at the same Time the Defendant did execute the said Bond conditioned to repay the 600*l.* if the Remainders were not sufficiently barred within three Years, which the Plaintiff said would do as well, till a *Tenant to the Precipe* could be had; and that in *Michaehmas-Term Anno 20. Car. 2.* before the three Years were expired, the *Lady* did consent to make a grant of the Lands to *Robert Hopwood, Esq;* to make him *Tenant of the Freehold*; and thereupon the Defendant gave Notice to the Plaintiff, that he (the Defendant) would go on with the *Recovery*, which was accordingly suffered in that Term.

That the Defendant did not know, but that Sir *Edward Mosely* had a good Estate in Fee of the Lands, and Power to devise the same; however, that the Plaintiff required no more than that the Defendant should convey the Possibility which he had to those

Lands, nor did the Defendant ever intend to grant any more; and the same was wholly of the Plaintiff's own Seeking, and it was he, and not the Defendant who set a Value upon the Purchase; so that all being done at his Importunity and Request, he cannot be entitled to have back the 600 l.

And the Court being of that Opinion, the Bill was dismissed.

The Mayor and Commonalty, and Citizens of London, Governors of the Hospitals of Christ, Bridewell, and St. Thomas, Plaintiffs.

Michael Russell, Thomas Gouge, William Jenkins and others, Executors of Giles Russell, and the Executors of Michah Russell, Widow, deceased, Defendants.

The Husband devised 1000 l. to his Wife, and about five Years after he wrote a Codicil, reciting that he had given her 1000 l. by his Will; and by that Codicil he gave her 1600 l. decreed she shall have that Sum, and not both.

Giles Russel, late Citizen and Freeman of *London*, being seized in Fee of several Freehold and Copyhold Lands, which he surrendered to the Use of his Will, and being likewise possessed of a personal Estate to a very great Value, did by his said Will dated 29 August 1664, devise his said real Estate to his Executors upon Trust for his Wife for Life, and after her Decease, that the Plaintiffs and their Successors should have the same for the Maintenance of nine Poor Children, to be chosen as in his Will is mentioned, and to put them out Apprentices; and the Overplus, if any, to be for the Use of the said *Hospitals*.

And all his Goods, Plate, Jewels, and Household-stuff Estate, which should be in his House in *Coleman-Street*, at the Time of his Decease, together with the Sum of 1000 l. he devised to his said Wife *Michah* in full Satisfaction of her *Dower*, or Thirds at *Common Law*, and of all other Claims and Demands to any of his Lands, Tenements, or to his Goods and Chattels by the *Custom of London*, or otherwise; and upon Condition that the said *Micha* within three Months after his Decease, should release all her Right to his said real and personal Estate.

After-

Afterwards in *October* 1669, he made and writ a Codicil with his own Hand to this Effect.

If. Whereas there is 1000 l. given to the said Michah by his former Will, he did now give 1600 l. and whatsoever was in his former Will to his Wife Michah; and that his former Will should stand in full Force notwithstanding this Codicil.

The Testator died, and his Wife was also dead, and now the Plaintiffs exhibited their Bill against the Executors of the Wife, to have a Conveyance of the real Estate, and an Account and Discovery of the personal Estate, and that the same might be disposed to the charitable Uses in the Will.

Upon hearing this Cause, the only Point was, whether the Executors should have both the 1000 l. and the 1600 l.

And the Court was clearly of Opinion, that they should have only 1600 l. and that the Testator, besides the Specific Legacies, intended to give his Wife no more; and therefore decreed, that after the Executors had received 1600 l. out of that Part of the Estate which was not devised to the Wife, and the other Legacies, that then they should give up both the Residue of the real and personal Estate to the Plaintiffs for the charitable Uses, together with all Writings concerning the real Estate.

Termino Paschæ.

29 Car. 2. Anno 1677.

Bernard Powell, *Gent. Administrator of Henry Dillingham, late of the University of Oxford, deceased, Plaintiff.*

Richard Hine *and* Thomas Adams, *and others, Defendants.*

Plea of Privilege of the University of Oxford allowed.

THE Plaintiff as Administrator of *Henry Dillingham*, sues to have an Account of his Estate, which the Defendants have got into their Possession, on Pretence of some Debts due to them from the Intestate, and by this Means they obstruct the Plaintiff to have Satisfaction of a Debt justly due to him.

The Defendants plead, that they are privileged Persons, and Members of the *University of Oxford*, and there resident, which was certified by the Chancellor of the said University, and demanded *Consuance* of the Matter in Question, for that the same, of which the Plaintiff had complained by his Bill, is only examinable and determinable before him, or his Vice-chancellor, Deputy or Commissary, and not elsewhere.

The Court allowed the Plea.

Susan Stoakes, *Widow of Joseph Stoakes, Plaintiff.*

John Verrier, *Gent. Defendant.*

An Annuity was decreed to be paid, the Grant thereof being in the Possession of another.

ONE *Verrier* the Defendant's Ancestor being seised in Fee of the Messuage and Appurtenances in the Bill mentioned, did by *Indenture dated 23 Febr. 7 Jac.* in Consideration of 240^l.

paid to him by one *Nethersale*, grant to him, and to one *Joan Trussell*, with whom he afterwards married, an *Annuity* of 20 *l.* issuing out of the said *Messuage*, and other Lands in the said Deed, *Habendum* to them, and to the Heirs of *Nethersale*; *Proviso* to be void upon Payment of the said 240 *l.* and Interest, &c.

The said *Nethersale* and *Joan* his Wife, are long since dead, leaving Issue *Joan* and *Elizabeth* their Daughters and Coheirs.

Elizabeth married *Thomas Stoakes*, by whom she had Issue *William* and *Joseph Stoakes*, so that the said *Joseph* as Coheir with his Brother *William*, is entitled to a Part of his Mother's *Moiety*, according to the Custom of *Gavelkind* in *Kent*.

Joseph married the Plaintiff *Susan Stoakes*, to whom by his last Will, he devised the said *Annuity*, (*viz.*) to her and her Heirs, and died; but she cannot avow for the said *Annuity*, because the grant thereof is come to the Defendant's Possession, who denies to pay it, though by a Decree against him by one *Pownall*, who married *Joan* the other Daughter of *Nethersale*, he was decreed to pay the *Moiety* thereof.

Therefore the Court now decreed, that the Defendant should pay the same with *Interest* from the Time the same became due.

William Leas, and Margaret his Wife, and John Gouldsmith, *Exceptants*.

Edward Morton, Farrars Fowk, and others, *Feoffees* of Brerewood School, in the County of Stafford, *Respondents*.

THERE was a Decree made by the Commissioners for charitable Uses, to subject the Lands of the Exceptants, to the Use of *Brerewood School*, to which Decree Exceptions were taken, but the Feoffees did not think fit to proceed; but now by a *Subpna Scire Facias* they have received the Matter against the Exceptants, who shew the same Cause as they did before.

¶ That in the several Purchases made of the Premises from the Time of *Queen Elizabeth* to this Time, the several Lands of the two Exceptants have been quietly enjoyed without any Thing demanded for the Use of the said *School*, save only 20 *s.* Rent reserved out of the Lands of one of them, payable yearly to *John Gifford* and his Heirs; and 30 *s.* Rent payable yearly out of the Lands of the other, to the said *Gifford* and his Heirs, who granted the said Lands to the Ancestors of the Exceptants, Anno 10 Jac.

Decree of
Commission-
ers of chari-
table Uses
reversed.

10 *fac.* and which hath been paid from Time to Time, for the Use of the said School, and never at any Time demanded or paid to the said *Gifford*, or his Heirs, which the Exceptants do believe might proceed from some Agreement made between the *Giffords*, and the Feoffees of the said School.

Thereupon the Court declared there was no Cause to charge the Exceptants Lands with the Decree made by the said Commissioners, or with any Exactions or Impositions of Rent, or Sums of Money whatsoever, and reversed the Decree of the Commissioners for charitable Uses; and decreed that the Lands of the Exceptants shall be from henceforth discharged of the same, and of all Sums whatsoever by the Feoffees, other than the 20 s. and the 30 s. aforesaid.

Katharine Newport, *the Daughter of the Earl of Newport, Plaintiff.*

Charles Kynaſton *and others, the Executors of the Lady Katharine Lawſon, Defendants.*

Devise of a Jewel to one, wishing her all Happiness, and 500 l. and afterwards

by a Codicil, she devised to the same Person 500 l. in Silver: decreed she shall have both.

The Will of the Testator is his Law; and the Rule of all Interpretations of Wills is, that they be explained by the Will it self as far as it can be known from the whole Tenor thereof, and the other Proofs that may be had of it; and that 'tis just and reasonable. *Dom. 2 Vol. 52.*

THE Point in Difference in this Case was, whether the Plaintiff should have *two five Hundred Pounds* by the Will of the *Lady Katharine Lawſon*, or only one 500 l. the Will was thus.

ſſ. I give to my Godaughter *Katharine Newport* a Jewel made like a Knot set with Diamonds, and enamelled sky-colour, wishing her all Happiness, and 500 l.

To *Katharine Snead* I give a Diamond Bodkin, made like a Sheppard's Crook; and an emerald Border I likewise give her as a Token of my Love, reserving to my self to alter or add to this my Will.

Afterwards by a *Codicil* annexed to her Will, and made Part thereof, she devised a Legacy to the Brother of the said *Katharine Newport*, and then these Words follow:

ſſ. I give to his Sister my Godaughter *Katharine Newport*, 500 l. in Silver, and then after two Legacies given to other Persons, she devised to her Godaughter *Katharine Snead* 100 l. more than I have given to her by my Will

The Court, upon reading the Will, was of Opinion, that the Plaintiff was well intitled to 1000*l.* and decreed the same accordingly to be paid to her by the Executors at a certain Day; and if they failed to pay it on that Day, then to pay *Interest* for it from that Time.

Sir William Waller, Plaintiff.

William Dale, Defendant.

ABOUT fourteen Years past, the Plaintiff and *Sir Robert Thomas*, and *Robert Reynes* being all young Gentlemen, agreed to borrow 500*l.* upon their Joint Security, and one *Wiltshire* a near Relation of the Defendant *William Dale*, undertook to furnish them with the said Sum; and for that Purpose he brought some Writings to the *Castle-Tavern* near *St. Clement's Church*, for them to execute, which were two Bonds with *Warrants of Attorney*, to confess Judgments for securing the Repayment of 500*l.* which Money was just then coming, (as he affirmed) and therefore desired the Gentleman to seal the said Securities which they accordingly sealed and delivered to the Use of the Defendant *Dale*, who was a meer Stranger to them; but was made the Obligee by the Direction of the said *Wiltshire*, who pretended that he (the Defendant) was to lend the Money, and was coming with it.

The Plaintiff relieved against a Fraud.

One of these Bonds was a Penalty of 600*l.* conditioned to pay 300*l.* and the other was in the Penalty of 400*l.* conditioned to pay 200*l.* and Interest, &c. and after they were executed, they remained sometime on the Table in the same Room, together with the *Warrants of Attorney*, and until the Money should be brought.

But *Wiltshire* watching for an Opportunity, privately conveyed them away, and sent them to the Defendant, who never brought or advanced one Penny in ready Money on the said Securities, or either of them.

Afterwards at another meeting, *Wiltshire* pretended a Disappointment of Money, and proposed to give them a Parcel of *Raw Silk* which he affirmed was of equal Value with 500*l.* but did not shew or produce the same, for that he undertook to sell it; and upon Sale thereof to pay the said Money.

In some short Time after, *Wiltshire* came to them again, and told them, that he had sold the Silk for 200*l.* which he paid to the Gentleman, and they divided it amongst them; and this was all the Money which they ever received on the said Securities, but

Wiltshire

Wiltshire told them, that he would deliver them up to be cancelled at any Time, upon the Payment of the said 200 *l.* and Interest; upon which the Obligors were all satisfied for some Time.

But soon after the said *Wiltshire* died, and *Dale* the Defendant entered up the said *Judgments* on those Bonds for 1000 *l.* and Execution was taken out against the Plaintiff, and the other Obligors being withdrawn, or otherwise complying with *Dale*, they refuse to pay their Proportions, intending to lay the whole Debt on the Plaintiff, who now exhibited his Bill against *Dale*, to be relieved against this Fraud; and that upon Payment of 200 *l.* and Interest, the Bonds may be delivered up, and the Judgments assigned to the Plaintiff.

This appearing to be really the Case even upon *Dale's* Answer, who pretended he was a Stranger to those Transactions, but that he had really delivered to *Wiltshire* 500 *l.* worth of Raw Silk, soon after the Securities were delivered to him.

Thereupon the Court decreed as the Plaintiff had prayed in his said Bill.

Edward Whitton, *Executor of Thomas Whitton,*
Plaintiff.

John Searl and others, *Executors of John Bassano,*
and Edmund Lee, *Esq; Defendant.*

A Bond given as an Accumulative Security for a Sum of Money already decreed, shall not go in Satisfaction of any subsequent Debt.

A *Andrew Bassano* by his Will dated in the Year 1657, devised his Lands, being of the Value of 350 *l.* per Ann. to his Wife *Anne* for Life, Remainder to *John Bassano*, and *Thomas Whitton*, and their Heirs in Trust, that they or the Survivor of them, and their Heirs should within two Months after the Death of his said Wife *Anne*, sell the Premises to the utmost Value; and that they should pay the Money arising by such Sale, and the Profits of the said Lands till sold, from the Death of the said *Anne*, to the aforesaid *John Bassano*, to pay and satisfy the several Legacies in the Will mentioned, which in all amounted to 350 *l.* and which he thereby directed to be paid within three Months after such Sale.

The *Overplus* together with the mean Profits (after the Legacies paid) he devised to *John Bassano*, and to *Andrew Bassano* his Brother, and to *Thomas Whitton* (the Plaintiff's Testator) to be divided between them Share and Share alike.

Anne died in July 1665, then *John Bassano* entered on the Lands, and received the Rents; and about August 1661, *Thomas Whitton*

Whitton died, having first made his Will, and the Plaintiff *Edw. Whitton* Executor, who proved the same, and demanded of *John Bassano* the Performance of the Trust, who refusing, the Plaintiff obtained a Decree against him, for a third Part of the Surplus of *Andrew Bassano's* Estate, which was to be divided between him the said *John Bassano*, and *Andrew Bassano* his Brother, and *Thomas Whitton* the Plaintiff's Testator; which third Part the Master reported to amount to 416 l.

Afterwards *John Bassano* sold the Premises to one *Lee* for 4100 l. and desired the Plaintiff *Edward Whitton* to forbear to prosecute him on the said Decree, promising that 116 l. Part of the said 416 l. &c. should be paid out of the first Purchase-Money received; and that he would give Bond for the Residue which he would pay as the Purchase-Money should be received; and accordingly in *February 23. Car. 2.* he gave the Plaintiff a Bond of 600 l. Penalty, conditioned to pay 150 l. in *March* following; and the other 150 l. on the 24th of *June* next, which Bond was only on additional Security for 300 l. Part of the 416 l. reported to be due to the Plaintiff as aforesaid.

John Bassano died in *Feb. 1671*, possessed of a personal Estate to the Value of 3000 l. having made his Will, and devised his Lands to the Defendants *Searl* and *Lloyd*, in Trust to satisfy his Debts and Legacies, and made them the Executors; and they proved his Will, and took upon them the Execution thereof.

But before *John Bassano* died, he borrowed 100 l. of the Defendant *Lee*; and the Plaintiff became bound with him, for the Repayment thereof with Interest, which not being paid, the Plaintiff was sued, and paid it.

And now the Executors of *John Bassano* would have that Bond which he gave to the Plaintiff, for Payment of the 300 l. to be in Satisfaction and Discharge of the whole, (*viz.*) as well for the third Part of the Surplus arising by Sale as aforesaid, as for the 100 l. for which the Plaintiff stood bound with him, and which he paid to the said *Lee*.

But the Court was of Opinion, that it was only an accumulative Security for the Debt due in Pursuance of the Decree; and that the Plaintiff in the first Place ought to have an Account from the Executors of *John Bassano*, of the Rents and Profits of the Lands, &c. and of the real and personal Estate of the said *Bassano*, and that his Debts ought to be paid according to the Course of the Law; and that the Plaintiff ought to have an Account of the remaining Purchase-Money in the Hands of *Lee*.

Francis Munn, *Administrator de Bonis non* of Michael Dunkin, *Administrator during the Minority* of Margaret Brown, *Executrix of her Father Quarles Brown*, by the said Francis her next Friend, Plaintiff.

The Governors and Company trading to the East-Indies, Michael Dunkin, Peter Daniel, and Jo. Johnson, Defendants.

Sale of Stock in the East-India Company, when the Buyer had full Notice, that it was not the Stock of the Seller, was decreed to be fraudulent.

THIS Bill was brought by an Infant, *Executrix and Residuary Legatee* of her Father's Will, to have an Account and Satisfaction from an *Executor of an Administrator, during the Minority of the said Plaintiff*, of the Estate of her said Father, which was received as well by the said Administrator, as by his Executor, and to have Satisfaction of 500*l.* Stock, which the Infant's Father had in the *East-India Company*; and which the *Administrator Dunkin, during the Minority* of the Plaintiff, sold to the Defendants *Daniel and Johnson*, two Members of the said Company, who pretend that they bought it of the said *Administrator*, not knowing that it was the Estate of the *Infant*, but that it belonged to the said *Administrator* himself; whereas they had *full Notice*, that it was not his Estate, as it appeared by the Entries in the Books of that *Company*; and the said *Administrator* being now dead, having first made a Will, and the Defendant *Michael Dunkin* Executor, the said *Francis Munn* took out Administration *de Bonis non* in the behalf of the Plaintiff, who by that Means ought to have an Account from *Dunkin* the Executor, as well for the personal Estate of her said Father, as for the 500*l.* Stock.

And an Account was decreed accordingly; and as to the Sale made by *Dunkin* the Administrator, &c. of the Stock in the *East-India Company*, to the said *Daniel and Johnson*, the Court declared, that it was fraudulent and illegal, being bought by them with *full Notice*, that it was not the *Administrator's* Estate, &c.

George Perryer, *Esq*; Plaintiff.

George Lord Hallifax, Robert Foley, John Forth,
John Huniades and Philip Foley, *Esq*; Defendants.

John Forth the Defendant owed Philip Foley (another Defendant) 2000 *l.* who having Occasion for his Money, the said John Forth borrowed 2000 *l.* of the Plaintiff Perryer to discharge Philip Foley, which Sum the said John Forth was to receive of the other Defendant Robert Foley, being the Purchase-Money of a Brewhouse in *Somersetshire*, which the said Forth had sold to the said Rob. Foley, who had contracted with Forth, and was to pay him so much Money for that Brewhouse; but before Forth received any Part of the Purchase-Money, he paid the said 2000 *l.* Debt to Philip Foley.

The Plaintiff relieved against a Foreign Attachment.

Afterwards when the Conveyance of the Brewhouse was executed by the said Forth to Robert Foley, he could not pay down ready Money, but he gave Forth two Bonds, each of them to pay 1000 *l.* within half a Year, which Bonds Forth delivered to the Plaintiff Perryer, of whom he borrowed the 2000 *l.* who directed an Assignment of them from the said Forth to John Huniades (another of the Defendants) to the Plaintiff's Use, which Assignment was accordingly executed by Forth.

Afterwards the Lord Hallifax attached this Money in the Hands of Robert Foley, for so much due to him from Forth; and Huniades having an Interest in the said Bonds, by Virtue of the said Assignment, he refused to transfer that Interest to the Plaintiff Perryer, according to the Trust; and thereupon the Plaintiff exhibited his Bill to be relieved against this Attachment, and to have the Money decreed to be paid to him upon the said Bonds, and that Huniades be compelled to transfer his Interest in the Trust of the said Bonds, &c.

It was decreed, that Robert Foley should pay the Money, according to the Condition of the said Bonds, to the Plaintiff Perryer; and that upon Payment thereof, the Plaintiff should deliver up the Bonds to Robert Foley to be cancelled, and a perpetual Injunction awarded against the Lord Hallifax and Philip Foley, to stay their Proceedings on the said Attachment, or other their Proceedings at Law, for the Money on the said Bonds; and that the said John Huniades shall transfer his Interest in the said Bonds to the Plaintiff.

Thomas Love, *Plaintiff*.

Christopher Hawkes, *Administrator of Thomas Hawkes, Defendant*.

Bill of Sale
decreed to
be delivered
up, and Sa-
tisfaction to
be acknow-
ledged on
a Judgment,
pursuant to an Agreement.

THE Plaintiff was Tenant to the Intestate *Thomas Hawkes*, by a Lease of several Lands in *Hackney*, under the yearly Rent of 40 *l.* which Rent being in Arrear, the Plaintiff gave a Judgment, and a Bill of Sale of his Goods to the said Intestate *Thomas Hawkes*, for securing the Payment thereof.

Afterwards Sir *Thomas Player* seized the Goods of the Plaintiff for Rent due to him, and then the Intestate desired better Security as well for the said Arrears, as for the growing Rent; and upon *Febr. 1674*, they came to an Agreement, which was, that the Plaintiff should procure one *Stephen Moor*, to be bound with him for the growing Rent which should accrue during the Term in the Lease, as also for the Arrears which were secured by the Judgment, all which did amount to 260 *l.* and upon giving such Security, the Intestate was to acknowledge Satisfaction upon the said Judgment, and to deliver up the Bill of Sale.

Accordingly the Plaintiff together with the said *Stephen Moor* entered into ten Bonds to the Intestate, for securing the Payment of the said Money on several Days, which Bonds the Intestate accepted, and the Plaintiff by his Order left them in the Hands of one *Walker* his Attorney.

And it was farther agreed between the said Parties, that the Plaintiff and the said *Stephen Moor* should execute a *Warrant of Attorney*, to confess Judgment or Judgments, on any or all such Bonds, whereon *Failure* should be made of Payment of the Money, according to the Condition of such Bond or Bonds; and afterwards the Plaintiff and *Stephen Moor*, did upon the Failure of Payment of one Bond, execute such Warrant of Attorney, according to the said Agreement.

But the said *Tho. Hawkes* died without delivering up the said *Bill of Sale*, or acknowledging Satisfaction on the Judgment; and the Defendant as his Administrator, hath got the *Bill of Sale* into his Possession, and hath brought a *Scire Facias* upon the said Judgment against the Plaintiff, who now exhibited this Bill to have the Agreement performed, and that Satisfaction might be acknowledged on the said Judgment, and the Bill of Sale delivered up.

All which was decreed accordingly.

Francis Tercese, *Plaintiff.*

Michael Geray, *Defendant.*

IN December 1674, A. B. of Lyons in France, drew a *Bill of Exchange* on the Defendant Michael Geray, at two *Usances*, to pay unto B. C. or his Order, 1100 *Crowns* at 59 Pence and one Eighth Sterling *per Crown*, for Value received, and to pass the same to Account as *per Advice*, &c.

A Bill of Exchange was left after it was accepted; decreed that the Plaintiff making

Affidavit, and giving Security to indemnify the Defendant, that he shall pay the Money due on the Bill.

B. C. *indorses* this Bill to be paid to D. E. of Leghorn, Merchant, or his Order, &c. for *Value received*.

D. E. by the like *Endorsement* appoints it to be paid to the Plaintiff Michael Tercese, or his Order.

After which Endorsements, and before the two *Usances* were expired, the said Bill of Exchange came to the Hands of Francis Tercese the Plaintiff, who presented it to the Defendant Mich. Geray the *Drawee*, who accepted it by under-writing his Name, so that by such Acceptance he became obliged to the Plaintiff to pay the Money; but he happening to loose or mislay it, (of which he made *Affidavit*) now exhibited his Bill against the Defendant, who refused to pay the Money, tho' the Plaintiff offered to give him Security to indemnify him against any other Person for the same; and having annexed the said *Affidavit* to his Bill, he prayed that the Defendant might be compelled to pay the Money.

This being confessed by the Answer, it was objected against the Plaintiff, that it did not appear by his *Affidavit*, that he had not assigned the Bill to another.

But the Court decreed the Defendant to pay the Money to the Plaintiff, he giving Security to indemnify the Defendant, as the Master shall think reasonable, against any Person, who may hereafter demand the same.

Term.

Term. Sanct. Trin.

29 Car. 2. Anno 1677.

Richard Norwich, *Plaintiff.*

John Sanders, *Defendant.*

Copy of a
Deed to lead
the Uses of
a Fine, de-
creed to be
Evidence.

THE Plaintiff is a Purchaser of the Lands in the Bill, &c. for a valuable Consideration, which he bought of one *Blows*, who married *Elizabeth*, the Widow of one *Bishop*, to which said *Bishop* and *Elizabeth* his Wife, and to their Heirs, the said Lands were conveyed by one *Norwich*, who in the Year 1653, purchased them of *Richard Sanders*, to which said *Richard* and to the Heirs of his Body, they were devised by the last Will of his Father *George Sanders*.

Richard Sanders the Devisee levied a *Fine*, and suffered a *Common Recovery* of these Lands, to bar as well his own right Heirs as the *Remainders*; and declared the Uses thereof to the said *Norwich* and his Heirs, and Possession hath quietly gone with the several Purchasers thereof ever since the Year 1653, to this Time.

But the Defendant *John Sanders* having got the original Deed to lead the *Uses of the said Fine and Recovery* into his Custody, and the Plaintiff having only a *Copy* thereof, for that only a small Part of the Lands therein computed were purchased by him; he now exhibited his Bill to have the Possession of the said Lands instated in himself, and to examine Witnesses to perpetuate their Testimony, and that the *Copy* of the said Deed may be admitted as Evidence, &c.

The Court decreed, that a *Copy of the said Deed* shall be good *Evidence*, for the Lands in Question, both at Law and in Equity, against the Defendant, his Heirs and Assigns, and all claiming under him, or his Father since the Year 1653, &c.

Margery Rumney, *Plaintiff.*

William Mead *and others, Defendants.*

THIS Bill was, to have a Discovery of 250*l.* which was al-
ledged to be due, and owing by the Defendant to the E-
state of one *Samuel Bulstrode*, against whom the Plaintiff obtained
a Judgment, in the Year 1665, for 400*l.* due to him from the said
Bulstrode.

Bill to dis-
cover the
Estate, &c.
The Defen-
dant demurs,
for that the
Administra-
tor of him, of

whose Estate a Discovery is sought, is not made a Party, and pleads the Statute of Limitations.

The Defendant demurred, for that one *Thomas Bulstrode* is
Administrator to the Intestate Samuel Bulstrode, to whom (if any
Thing is due) the Defendant ought to pay it; and that the Plain-
tiff is not capable to make a Demand thereof, or to discharge the
same:

And pleads, that if there were Dealings between him and the
Intestate *Samuel Bulstrode*, for which the Defendant ought to be
accountable to the said *Bulstrode's* Estate, that the same were
transacted above six Years since, and pleads the Statute 21 *Jac.*
of Limitation of Actions.

The Court allowed both the Demurrer and Plea.

Thomas Smallbone, *Gent. Plaintiff.*

Philip Brace, *Executor of Diana Reresby, and Tho-*
mas Crompton, Esq; Defendants.

Diana Reresby by her last Will, devised 400*l.* to the Plain-
tiff *Tho. Smallbone*, to be paid unto him out of the Sum of
500*l.* in the Hands of the Defendant *Crompton*, and secured by his
Statute to be paid within one Year after her Decease; and this
was to be in Part of her grateful Acknowledgment to the Plaintiff
Smallbone, for his great Care and Kindness in her Concerns;
who now exhibited his Bill against the Defendant *Philip Brace*,
Executor of the said Diana, to have his Money paid, the said *Sta-*
tute acknowledged by *Crompton*, being now in his Hands.

Where a Le-
gatee shall
not abate in
Proportion,
there being
not sufficient
to discharge
all the Le-
gacies.

Brace refused to pay this *Legacy* of 400*l.* for that the Testa-
trix *Diana* had given away above 3000*l.* in Legacies, and that
her Estate amounted to 1900*l.* and no more, as it appeared by an
Incentory thereof; so that it will fall much short to satisfy those
Legacies

Legacies which cannot be paid, unless the Plaintiff will submit to an Abatement in Proportion, which the Defendant in that Case is willing to pay.

The Court decreed *Crompton* to pay the 400 *l.* to the Plaintiff, because 'tis in Nature of a *Specifick Legacy* given to him, and ought not to be subject to any Abatement whatsoever, though the Estate should fall short to answer the other Legacies; and that in Default of Payment thereof, *Brace* the Executor shall permit the Plaintiff to put the Statute in Suit in his Name, and he to be protected by this Court.

Richard Peachy, *Plaintiff.*

Robert Colt, Sarah and Martha Peachy, by Susan Peachy their Mother and Guardian, *Defendants.*

Lands charged with the Payment of Legacies, were devised afterwards to the Plaintiff for Life, Remainder to the Defendant and his Heirs; decreed, that the Defendant shall contribute two Thirds towards the Payment.

John Peachy, Father of the Plaintiff *Richard*, being seised in Fee of a Messuage in the Bill, of the yearly Value of 40 *l.* did by his last Will dated in *August* 1666, devise to *Susan* his Wife 10 *l.* per Annum for her Life, payable quarterly out of the said Messuages; and the Inheritance thereof he devised to his Son *John Peachy* and his Heirs, on Condition that he pay unto *Sarah* and *Martha* the Daughters of the said Testator 50 *l.* a-piece at their respective Ages of 21 Years; and in Default of Payment thereof, then to her or them to whom such Default should be made, and to her and their Heirs; and if either of them did before her Legacy became payable, the same should go to his said Son *John*; and he made his Wife Executrix, and died.

After whose Death *John* the Son entered, and not long after he likewise made his Will, and thereby devised to the Plaintiff *Richard Peachy*, (who was his elder Brother) the aforesaid Messuage for his Life, and afterwards to the Defendant *Robert Colt* and his Heirs; and made the Plaintiff *Richard* his Executor, and died.

The Plaintiff, since the Death of his Brother *John*, hath paid his Mother 10 *l.* per Ann. but *Martha* and *Sarah* being now very near of being of Age, threaten to evict the Plaintiff, if their Legacies of 50 *l.* a-piece are not paid as they become due; and *Colt* refuses to pay any Part thereof, tho' he hath much a greater Estate in the Premises than the Plaintiff; and therefore he insists that *Colt* may pay two Thirds of the said Portions, or such a Porportion thereof as the Court shall direct; or that if the Plaintiff should pay the whole, that then he and his Executors may enjoy the said House till he and they are satisfied.

Colt's Counsel insisted, that in the Will of *John Peachy the Son* 'tis expressed, that the Plaintiff (his Brother) was made Executor thereof, upon Condition, that he pay his Debts and Legacies; and there being a Casualty which depended on the Death of *Martha* and *Sarah* dying before twenty-one, in which Case the Legacies bequeathed to them, would come to the Plaintiff *Richard*, as Executor of *John* his Brother; and for that the said Legacies were the Debts of *John*, he being accountable and subject to pay the same; and the Plaintiff being appointed by the Will of *John*, to pay all his Debts; therefore the Defendant *Robert Colt* ought not to be impleaded to contribute towards the said Legacies.

But the Court decreed, that *Colt* should contribute two Thirds thereof; or that if the Plaintiff should pay the whole, he and his Executors after his Death, should hold the Premises till they were satisfied.

Julian Noy, *the Administratrix of Joseph Noy her late Husband, Plaintiff.*

John Befustane, John Ellis and Anne his Wife, John Wallis and Sarah his Wife, Francis Green and others, *Defendants.*

Joseph Noy the Husband of the Plaintiff, lent 1000 *l.* and for securing the Repayment thereof with Interest, the Lands in the Bill mentioned were mortgaged to him *in Fee*; he died before the Money was repay'd; and after the said mortgaged Lands were forfeited for Non-payment.

A Mortgage
in Fee, and
forfeited,
and the
Mortgagee
in Possession;
the Money
was decreed

to be still the personal Estate of the Mortgagee, and must go to his Administrator.

After whose Death, his *Lands* descended to the said Defendants *Anne* and *Sarah*, as his Daughters and Coparceners, and by Consequence the mortgaged *Lands* descended to them, the same being a Mortgage to him and his Heirs, and forfeited as aforesaid.

Julian the Plaintiff, who was his Widow and *Administratrix*, exhibited her Bill against the *Mortgagor*, and against the *Cob heirs of the Mortgagee* (her Husband,) suggesting that he died above 300 *l.* in Debt; and that she had not sufficient to discharge the same, unless the Money due on the said Mortgage was decreed to her; or otherwise that the Defendants, or such of them to whom the mortgaged Lands did descend, upon such Forfeiture by the

R r

Death

Death of *Joseph Noy*, in Trust for her, as his Administratrix, might execute Conveyances thereof to her, or to whom she shall appoint, free from all Incumbrances, and to foreclose the Mortgagor.

And it appearing that *Joseph Noy* the Mortgagee was before his Death, in Possession of the mortgaged Lands; and that since his Death, his said Daughters and Coheirs have received the Rents and Profits; and that they now claim as Heirs at Law to him, and that they are sued at Law by his Creditors, and are willing to pay his Debts to the Value of the Estate come to their Hands, in Case the personal Estate fall short; and therefore it was insisted by their Counsel, that they ought not to be divested of their Right to the Premises.

But the Plaintiff *Julian* offering to release any Right of *Dower* which she might have or claim in the said mortgaged Lands, the Court was of Opinion, that the Money lent on the said Mortgage, was originally Part of the personal Estate of *Jos. Noy* the Mortgagee; and tho' the Mortgage was forfeited, yet still it remains as a Security for the Payment of the principal Money and Interest, and that the same belongs to the Plaintiff as his Administratrix.

Therefore the Defendants were decreed to account, and that the Plaintiff should have her Costs both in this Court, and at Law, against the Defendants respectively.

Christopher Rofs and Elizabeth his Wife,
Plaintiffs.

George Pudsey, Esq; and — Stephens and Mary
his Wife, and others, Defendants.

Bill to establish an old Settlement, the Defendant pleads, that the Tenant in Tail in Possession levied a Fine, and suffered a Common Recovery to bar the Entail; and declared the Uses to himself and his Heirs: The Plea was held good.

THE Case, ss. *George Pudsey*, the Grandfather of the said *Elizabeth* and *Mary* had two Wives; by the first he had Issue *Richard* and *Michael*, by the second Venter he had Issue *George* and *William*.

Michael the second Son by the first Venter had Issue two Daughters, *Elizabeth* married to the Plaintiff *Rofs*, and *Mary* married to the Defendant *Stephens*, and *George* the eldest Son by the 2d Venter, had Issue *George the Defendant*.

In *March* 18 *Jac.* Articles of Agreement were made between the said Father and Sons, by which the Manor and Rectory of *Ellsfeild* in *Oxfordshire*, were to be entailed on *Richard* his eldest Son and the Heirs Males of his Body; Remainder on *Michael* and the Heirs Males of his Body, Remainder to the right Heirs of the Father, with Power to the said *Michael*, to make Leases for Lives to his younger Children, when he should come into Possession of the Premises, by Virtue of the said Entail; and then also to relinquish to *George* the eldest Son, by the second Venter, a Farm called *W. Farm*, worth 50 *l.* per Ann. which he had for a long Term of Years; and an Annuity of 20 *l.* per Ann. which he had in Fee, and pursuant to these Articles a Settlement was made accordingly, and soon after *George* the Father died.

And now *Richard* his eldest Son being in Possession of the Premises, by Virtue of the said Entail, levied a Fine, and suffered a Common Recovery of the Lands limited to *Michael* in Remainder, and declared the Uses thereof to himself and his Heirs.

And afterwards by another Deed dated *Anno* 12. *Car.* 1. he made another Settlement, by which he limited the Premises to *Michael* only for Life, Remainder to *George* the eldest Son of his Father, by the second Venter for Life, Remainder to *William* and his Heirs, and shortly after died without Issue.

The said *George*, who was to have the Benefit of *W. Farm*, in case the first Settlement had stood, and in case the Estate therein limited to his Brother *Michael*, had come into Possession, finding himself aggrieved by this second Settlement, exhibited a Bill formerly in this Court, and obtained a Decree to set it aside.

In Obedience to which Decree, *Michael* delivered up his Lease which he had for a long Term of Years in *W. Farm*, having first made several Leases to his younger Children, pursuant to the Power he had by the first Settlement; the Interest of which Leases are vested in, and survived to the Plaintiff *Elizabeth* and the Defendant *Mary*, which the said *Elizabeth* hath enjoyed accordingly.

But the Parties to that Decree dying, *William* the second Son by the second Venter, did again set up the second Settlement, made 12 *Car.* 1. and made Entries, and brought Ejectments, &c. against which the Plaintiffs exhibit this Bill to be relieved; and that the Articles and first Settlement made 18 *Jac.* should stand in Force, &c.

The Defendant *George Pudsey* pleaded, that if any such Deed of Settlement was made by *George* the elder, *Anno* 18 *Jac.* yet immediately after his Death, *Richard* his eldest Son entered and became seised of an Estate in Fee-Tail of and in the Premises, and being minded to bar the Remainders, and to have an absolute Estate in Fee in himself, he did in *Easter-Term* 8 *Car.* 1. levy

a *Fine*, and *suffer a Common Recovery*, in order to bar the Entail; and by a Deed dated 28 April, declared the Uses thereof to himself *in Fee*; and thereby the said *Richard* became seised of an absolute Estate in Fee-Simple of the Premises; and afterwards by Deed dated 12 Car. 1. in Consideration of settling the same in his own Name and Family, and Blood, he did convey it to the Use of himself for Life, and afterwards to his Brother *Michael* for *thirty-one Years, if he should so long live*; and afterwards to *George* his half Brother, by the second Venter for *eighty Years, if he should so long live*, Remainder to the first and all other Sons of the said *George* successively in Tail Male, Remainder to *William Pudsey* and his Heirs, by Virtue of which Settlement the said *Richard* and *Michael* enjoyed the same successively, during their Lives; and after their Deceases, the Defendant *George*, who is the Issue Male and eldest Son of the said *George Pudsey* his Father, who died in the Life-time of the said *Michael*, is vested and settled in the Premises to him and his Heirs Males, by Virtue of the said *Deed*, 12 Car. 1. and other Assurances as aforesaid; and thereby he holds and enjoys the same, and justifies the keeping all Deeds concerning the Premises, for Defence of his said Title.

And for *Demurrer* he says, that it appears by the Plaintiff's Bill, that the Leases under which they claim, were made long after the Settlement, 12 Car. 1. by which Settlement *Michael* was only Tenant for *thirty-one Years, if he lived so long*; and he being dead, the said Leases set up by the Plaintiffs, which of their own Shewing were *voluntary*, are now determined.

And by their own Shewing it likewise appears, that the *Articles* in the Bill mentioned were performed by the subsequent Deed made in Pursuance thereof, Anno 18 Jac. and that the Entail was barred by *Richard*, who executed the Deed, 12 Car. 1. and the Bill being to set aside that Deed, and to abridge the Tenant in Fee-simple from disposing his Inheritance; for these and other Reasons the Defendant demurred, and demanded the Judgment of this Court.

The *Lord Chancellor* allowed the Plea, with Liberty to the Plaintiff to reply.

Robert Roak, Henry Collier, and several other
Inhabitants of Horsell in Surrey, on the behalf of
themselves and other Inhabitants there, Plaintiffs.

Godfrey Lee, Defendant.

ON the third Day of June Anno 8 H. 8. the Prior of New-
ark granted to one Watson a Clergyman, for his Life, the
Church and Chapel of Horsell, and one Messuage together with all
the small Tithes arising there under the yearly Rent of 2 s. by which
grant it was provided, that Watson either by himself or Deputy,
should officiate in the said Church or Chapel, and serve the Cure
thereof; and should from Time to Time find Bread and other
Things used at the Altar for the Benefit of the Parishioners
there.

Tithes being
claimed by
the Defen-
dant as his
absolute In-
heritance,
under a
Grant from
the King, the
same were
decreed, &c.

After the Dissolution of Abbies and Priories, &c. King H. 8.
granted the said Tithes in Fee-Farm to A. B. under the Obligati-
on of providing a sufficient Minister to officiate in the said Church,
which hath even since been done, and the Minister hath taken the
said Tithes.

But within ten Years last past, one Anne Aleborn pretending
an Estate in the said Rectory, provided one Webb to officiate
there, which he did, and enjoyed the said Messuage and Tithes;
but the same being not worth more then 20 l. per Ann. Webb
discontinued, and no Care was taken for any Minister to officiate
there.

Thereupon the Parishoners applied themselves to the Bishop of
the Diocese, who by a Writing appointed the Plaintiffs Roak and
Collier, and others, to collect the Tithes, and to dispose them to
such Person who should be approved of by the Bishop to officiate
there.

And now Webb who had declined the Cure, pretended a
Title to the said Tithes, by Virtue of some Lease made to him
thereof; and prosecutes Roak and the other Parishoners for the
same, and which have been due for several Years; whereas Part
of the Tithes were paid to himself, and the other Part to the Mi-
nister who served the Cure according to a Sequestration or Writing
of the Bishop.

And of late the Defendant Lee pretends some Title under
Aleborn, and endeavours to evict the present Minister, who Of-
ficiates by the Approbation of the Bishop, and declares, that the
Tithes are his Inheritance, and when recovered, he will dispose
them to his own Use, by which Means the Church will be left
without a Minister, contrary to the former Grant and Usage.

The

The Defendant *Lee* claims an absolute Estate in the Premises, and that if the Minister did receive the same, it was not in Right of the Church, but as the free Gift of the Court; for that *Anno 4. Car. 1.* the Premises being vested in the *Crown*, the King did, by Letters Patents dated at *Cornbury in Middlesex*, 30 *July* in the said Year, grant the said Tithes to *W. and H.* and to their Heirs, together with the said Mansion-house, to hold as of his Manor of *East-Greenwich*, in free and common *Soccage*, rendring 2 s. per Ann. under which grant the Defendant claims by several mean Conveyances; and that he hath paid the said yearly Rent of 2 s. and that the said Tithes are not subject to any other Payment for a Minister, &c.

And that the *Bishop of the Diocese* hath not Power to allow a Compensation out of the said Tithes to any Person whatsoever officiating there, the same being the Estate and Inheritance of the said Defendant.

The Court declared, that this Bill which was now brought to have the Tithes, and that the same might be applyed to the Maintenance of a Minister officiating there, shall remain as a continual Claim against the Defendant; and he now consenting in Court not to pull down or deface the said *Chapel*;

The same was decreed accordingly; and that he should not disturb any of the Parishioners in Burials, or in going or returning to and from the *Church and Churchyard*, in order to attend Divine Service, and for performing other Rights and Duties, in and to the said Church, or hinder any Person appointed by the *Bishop*, to officiate there; and that the Church-wardens for the Time being, shall take Care to keep the said *Church in Repair*; and a perpetual Injunction was awarded to stay all Suits, &c.

Edward Twyford, *Gent. Plaintiff.*

Edmund Wareup, *Defendant, and econtra.*

Articles
sealed in
Order to a
Conveyance
of Lands,
which Con-
veyance was
afterwards
executed: It
was decreed,
that if there
was a Defect
in the Articles of
the Number of Acres;
yet the Purchaser
shall never resort
to the Articles
after the Conveyance
executed.

THIS Bill was, to have the Performance of Articles of Agreement made by the Plaintiff with the Defendant *Wareup*, for the Purchase of the Lands in the Bill, which were accordingly conveyed by the Plaintiff to the Defendant *Wareup*, and for which *Wareup* was to pay 6500 l. and that with Part thereof he was to pay off several *Statutes and Incumbrances*; and it was by the said Articles agreed, that *Wareup* should obtain several *Inclosures of Common*, which if obtained by a Decree would be of great

Advantage to him, and the Commons worth 40 s. *per Acre*; and that the *Enclosures* would be obtained for a small Charge, and that the Plaintiff should be at that Charge.

That *Wareup* refuses to pay the remaining Part of the Purchase-Money being 1500 l. for that in the Particular given of the Estate, and which was the Foundation of his Agreement, there were several Things very false; for that the Lands did not contain the *Quantity of Acres* therein mentioned; and in one Place there is but *one Life* charged to be in Being, when there were *two Lives* then subsisting; and in another Place two Lives are charged, when there were three Lives, &c.

The Court declared, that though the Covenant in the Articles was, that the Lands *completely contained so many Acres* as mentioned in the particular; yet in that very Particular, and likewise in the Conveyance 'tis mentioned to contain *so many Acres by Estimation*; so that if there were four or five Acres more, the Plaintiff cannot have them back again, and if there were so many less, the Defendant must take it according to the Conveyance.

That the Articles were only a Security and preparatory to the Conveyance, and the Defendant having afterwards taken a *Conveyance*, shall not resort to the *Articles*, or to any Particular, or to any Averment or Communication afterwards; for such Things shall never be admitted against the *Deed*; and therefore there was no Reason to make the Defendant any Allowance for the Defect in the Articles; but that he should have Allowance for *more Lives* than were charged in the particular, but none for *Defect of Commons*.

James Martin, and Anne his Wife Administratrix of Nathaniel Browning, Plaintiffs.

Jeremiah Sambrook, Defendant.

Nathaniel Browning, the late Husband of the Plaintiff Anne, being in the *East-Indies* in the Year 1664, and being possessed of several Goods and Chattels there, of the Trade of that Country, and several Sums of Money and Debts being due to him from the *Natives* there, he in August 1665, intrusted the Defendant then a *Factor*, there to get in and receive the Money and Goods, and to invest the same in *Diamonds* and other *Commodities*; and the Defendant having several other Goods of him the said Browning in his Hands, he promised to be accountable for the same, and at *Fort St. George* subscribed a Note acknowledging the Trust, and the Particulars of the Goods and Money, and the

The Defendant accounted with one appointed by the Administratrix to take his Account, who gave him a Release; the Administratrix shall have no farther Account.

saïd *Browning* being now dead, and his Widow married to the Plaintiff *James Martin*, they exhibited a Bill against the Defendant to perform the saïd *Trust*.

The Defendant confesses the *Trust*, and several *Sums* in his Hands, but as to some other *Sums* which he acknowledges to have received, he says he delivered them over to one *Harris* a *Factor* for the *East-India Company* then in the *Indies*, for better securing the same; for that a Quarrel happened between Sir *Edward Winton* the Governor and one *Foxcroft*, newly made Governor by the saïd *Company*, and with whom the Defendant took Part.

That *Harris* delivered over the Sum so left in his Hands to one *Greenbill*, being *ninety-two Pieces of Gold*, and *seven Hundred Pagues*, which saïd *Greenbill* gave a Bond for Payment thereof; and that the Defendant hath already accounted to one *Deverell*, for what he (the Defendant) had in his Hands; he the saïd *Deverell* having Authority from the Plaintiff, the *Administratrix*, to call the Defendant to Account; and afterwards *Deverell* gave him a *Release*, upon which he insists, knowing of no other Money or Goods of the Intestate than what is in the Hands of *Greenbill*, which he acknowledges was not brought into the Account.

The Court denied the Plaintiff any Relief as to the Account made up with *Deverell*, but decreed the Assignment of *Greenbill's* Security, for the Satisfaction of the Money he had of *Browning*, and as to any other Matter to dismiss the Bill.

John Puleston, *Brother and Heir of* Edw. Puleston
deceased, Plaintiff.

James Puleston, *Widow and Executrix of the saïd*
Edward Puleston, Defendants.

A Trust
shall never
be averred,
where no
such Thing
appears in
the Will.

Edward Puleston being seised in Fee of the Lands in the Bill to the Value of 400*l.* per Annum, devised the same to his Wife, the Defendant *Jane* and her Heirs; provided, that if his Brother *John Puleston* (the Plaintiff) should within five Years after the Death of the saïd *Edward*, pay to the saïd *Jane* 1000*l.* to enable her to pay his Debts, then she was to convey the Premises to his saïd Brother *John* in Tail, to take Effect immediately after her Decease.

And

And now the Plaintiff having exhibited his Bill to have the Estate conveyed to him, insisting that it was settled on the Defendant *in Trust*, to convey it as aforesaid; and that the 1000 *l.* ought to be paid out of the personal Estate of the Testator, or as far as it would go; and if that should fall short to satisfy his Debts, then the Estate in Land should be charged to supply what falls short.

And the Plaintiff having obtained a Decree to pay the 1000 *l.* at a Time prefixed, and for the Defendant to convey; and there being several Rehearings of the Cause, at one whereof it was decreed, that the *Defendant should join with the Plaintiff in the Sale of the Reversion*, to raise the 1000 *l.* forthwith, (which Sale was to be without Prejudice of the Estate of *Jane* for her Life) to pay the Debts of the Testator, and those in the *first Place*, for which he stood bound with him.

The Plaintiff thereupon obtained the Possession of the Premises by Virtue of a *Sequestration*, to which the Defendant was prosecuted, for not obeying the said Decree, which she now insisted was directly contrary to her Husband's Will.

The Court declared, that it was a dangerous Thing to *aver a Trust* where none appeared in a Will; and therefore decreed the Sequestration to be set aside, and the Defendant to enjoy her Estate for her Life, as the Will directs; and that the Plaintiff pay the 1000 *l.* which shall be Assets in his Hands to pay the Testator's Debts, and no Priority of those Debts for which the Plaintiff stood bound with the said Testator.

Term. Sanct. Mich.

29 Car. 2. Anno 1677.

Henry Fairfax, *Plaintiff*.Stephen Trigg, *Defendant*.

Bill to be re-
lieved a-
gainst a
Bond, Judg-
ment, and
Extent, ob-
tained frau-
dulently; de-
creed ac-
cordingly.

THE Plaintiff being Heir to a good Estate, and placed at the *Inns of Court* to qualify him for it, when it should come into his Possession, became afterwards indebted to several Persons; and in order to raise Money as privately as he could to satisfy his said Debts, he acquainted the Defendant (a Doctor of Physick) with his Condition, and treated with him to raise 300*l.* without the Knowledge of any of his Relations.

Upon which Treaty it was agreed, that the Plaintiff and one *King* were to be bound to the Defendant in a Bond of 600*l.* Penalty, conditioned to pay 300*l.* and *Interest*, at the End of one Year next after the Date of the said Bond, and to give a *Warrant of Attorney* to confess a Judgment for 600*l.* which Warrant should have Relation to the said Bond.

But the Plaintiff trusting to the Defendant's *Agent* to draw the said *Warrant of Attorney*, he made it absolute for 600*l.* and the Defendant caused Judgment to be enter'd thereon, and not on the Bond; and though it was *defeasanced* not to be enter'd till after the End of that Year; yet the Defendant caused it to be enter'd immediately upon a *Mutatus Assumpsit*; and having the Securities in his Hands, the Plaintiff was forced to agree with him to take *Silk Stockings* instead of the 300*l.* and those neither of that Goodness or Value agreed on; and not worth above 120*l.* and some of them were delivered (as he pretends) to the said *King*, for the Use of the Plaintiff, but without his Order or Knowledge.

That the Defendant knowing the Plaintiff would not call him (the Defendant) to an Account for these unjust Dealings, least his Relations should hear of his Debts, now demands the whole 300*l.* and *Interest* due on the Bond, and threatned to take out Executi-

on

on on *the Judgment*; so that at several Times the Plaintiff was forced to pay great Part of the Money, but yet the Defendant took out Execution, and extended the Plaintiff's Lands, and threatned to put the Bond in Suit, pretending that the same and the Judgment were distinct Debts, though the Plaintiff was no way indebted to the Defendant, but upon Account of the *Silk Stockings*; and therefore he now exhibited his Bill to be relieved against the said *Bond and Judgment*.

The Defendant by his Answer denied, that he promised the Plaintiff to furnish him with *ready Money*; but having a Parcel of Silk Stockings by him, one *T. C.* brought the said *King*, to be Surety for the Plaintiff, who acquainted the Defendant, that the Plaintiff would buy the said Stockings, and desired the Defendant to furnish him with 375 *Pair* at 16 *s. per Pair*, which came to 300 *l.* and finding by Inquiry that the Plaintiff was a Gentleman related to a worthy Family, the Defendant procured a Scrivener to draw such Bond and Warrant of Attorney, which was accordingly done, and delivered into the Hands of the said *King*, till the Stockings should be delivered to the Plaintiff, and thereupon the said *T. C.* and *King* did chuse 375 *Pair* out of a greater Parcel; and then the said Bond and Judgment were delivered to the Defendant, and the *Stockings* thus delivered were as good as he at that Time sold for 16 *s. per Pair* ready Money; and that he hath received 240 *l.* of his Money, and that there is 130 *l.* now due for Principal and Interest, and Charges, on Payment whereof he will deliver up the Bond, and acknowledge Satisfaction on the Judgment at the Charge of the Plaintiff, who did acquiesce under this Bargain for six Years and more.

But the Court decreed the Plaintiff to pay only 60 *l.* being the remaining Part of 300 *l.* for which the Securities were given, the Defendant having acknowledged that he had received 240 *l.* of the Plaintiff already; and that this 60 *l.* shall be paid at a certain Time to be appointed by the Master, and then the Bond shall be delivered, and the Judgment and the Extent assigned to such Person as the Plaintiff should appoint, and this without *Interest*, and without any *Costs* at Law, or in this Court; but if the Plaintiff fail to pay the Money, then the Injunction shall be dissolved.

Samuel Cusse, Administrator de Bonis non of Henry Cusse his Father, and Administrator of Henry Cusse his Brother, Plaintiff.

Joseph Ash, Defendant.

Quiet Possession for twenty-eight Years, without any Claim, and a good Title.

MR. Bennet having purchased a Lease for 3 Lives of Lands held of the *College of Winchester*, mortgaged the same to one *Henry Cusse* the Plaintiff's Father for 600*l.* who by Virtue thereof entered and was possessed.

Henry Cusse the Mortgagee devised these Lands to be sold to pay a Legacy of 200*l.* which he gave to the Plaintiff, and 300*l.* more to his Brother *Henry Cusse*; and that this Sale should be made by the Plaintiff's eldest Brother *William Cusse*, who after the Death of the Testator entered, and was possessed of the Premises from the Year 1648, to the Year 1654, and then sold them to one *Ash* the Defendant's Father for 500*l.* who redemised the same to the said *William Cusse*, during the two last Lives in the said Lease under the yearly Rent of 60*l.* whereof 10*l.* per Ann. was the Rent reserved to the College; under which Rent the said *William Cusse* held the Premises till the Year 1667, in which Year he died.

After whose Death the Plaintiff entered, and held it to the Death of the last of the 3 *Lives*, and then, and not till then he pretended a Title at Law; and upon several Trials at Law, it was found against him.

But yet he insists, that the said *Ash* the Defendant's Father, and from whom the Defendant claims, and the Defendant himself had *Notice of the Will of Henry Cusse* the Testator; and that in Equity such *Notice* ought to bind the Interest of the said Lease for Lives; and therefore that the Defendant ought to pay those Legacies devised to him, (the Plaintiff) and to his Brother *Henry* with Interest for the same.

But the Court was of Opinion, that *William Cusse* having by Sale of the Premises received 500*l.* which was sufficient to Discharge any Demand to be made against him for those Legacies; and that he held the Lands for 6 Years, and *Ash* the Purchaser, and the Defendant held them from the Year 1654 to this Time, which was 22 Years more without any Suit or Demand for those Legacies either against the Defendant or his Father who was the Purchaser; and after all the said Trials, dismissed the Bill.

John Edwards *an Infant*, by Richard Couchman *his Guardian, Plaintiff.*

Robert Jorden, *Defendant.*

THE Father of *John Edwards* the Infant, devised to him all his real and personal Estate, and made the Defendant *Robert Jorden* Executor, during the Minority of his said Son, who now by his *Guardian* exhibited this Bill against the Defendant, to have an Account of the Rents and Profits of the said Estate.

Devise of a
real and
personal
Estate to an
Infant, when
he should
come of
Age; he
brought a

Bill by his Guardian against the Executor to give an Account.

The Executor demurred, for that he is not to account till the Plaintiff is of Age.

The Court decreed him to give Security to account, and to pay what should appear then to be due.

The Defendant demurs, for that the said Testator devised his real and personal Estate in Trust, &c. for the Benefit of the Plaintiff, *when he came to the Age of 21 Years*, excepting only 20*l.* per Ann. which he gave to this Defendant for his Care and Pains in managing the said Trust, and for Cause shews that the Defendant is not to account till the Plaintiff *attains his Age of twenty-one Years*; whereas he is not yet *above seventeen Years old*, and therefore hath no Right to have an Account till that Time.

The Plaintiff replies, that the Defendant hath received the Profits of his Father's Estate ever since his Death, (*viz.* for eleven Years,) the Estate being 300*l.* per Ann. besides a great personal Estate; and the Bill being, that the Defendant may give Security to this Court, that he shall come to Account with the Plaintiff, when he attains his Age of twenty-one Years, or else that this Court would take Care that he (the Defendant) be not permitted to receive any more of the Estate, he suffering the Debts to be unpaid, and the Plaintiff without Maintenance.

Thereupon it was decreed, that the Defendant forthwith give Security to a Master to give a just Account, and to pay what shall appear to be due to the Plaintiff at the Age of *twenty-one Years*, &c.

Humphrey Gardner *the elder*, and Humphrey Gardner *the younger*, Plaintiffs.

Sir Thomas Hatton, Bart. William Boteler, and Thomas Buck, Defendants.

A Mortgage in Fee, and forfeited, and the Mortgagee died; the Mortgagor shall redeem on Payment of the Principal and Interest to the Executor or Administrator of the Mortgagee, for 'tis Part of his personal Estate.

Humphrey Gardner the elder borrowed 700*l.* of John Hatton, who was Brother to the Defendant Sir Thomas Hatton, and to secure the Repayment thereof with Interest; he the said Gardner levied a *Fine* of the Lands in the Bill mentioned, and declared the Uses to the said John Hatton and his Heirs, upon Condition that if the said Gardner paid the said Principal Sum and Interest at the Time therein limited for the Payment thereof, then the same should be to the Use of the said Hump. Gardner and his Heirs.

of the Mortgagee, for 'tis Part of his personal Estate.

In June 1669, the said John Hatton made his last Will, and thereby devised to the Lady Hatton his Mother 600*l.* and to one Davis 200*l.* and made the said Lady and his Brother Sir Tho. Hatton, and the said Davis, Executors, and the said Sir Thomas residuary Legatee.

In 1673, the Executors agreed, that if the Lady Hatton would advance 100*l.* towards the Performance of her Son's Will, that she should then have the 700*l.* so secured by the said Mortgage, her Legagy being 600*l.* and that then the Plaintiffs and the Defendant Sir Thomas, were to join in an Assignment of the Mortgage to her and her Heirs; all which was done accordingly; and the Plaintiff therein covenanted to pay the Principal Sum of 700*l.* at the Time therein limited; and the Lady Hatton covenanted that upon Payment thereof, and the Interest, she would reconvey the Premises to the said Gardner and his Heirs, or to whom he should appoint; and that until Default of Payment, the Plaintiffs should enjoy the Premises; and they gave a Bond of 1400*l.* Penalty, conditioned for Performance of Covenants; the Lady Hatton made her Will, and the Defendants Boteler and Buck Executors, and died, leaving Sir Thomas Hatton her Son and Heir.

The Defendants agreed, that the Mortgagor should have a larger Time for the Payment of the Interest which was now due on the said Mortgage; and the same was forfeited for Non-payment of the Principal; and now being ready to pay both, the Defendant Sir Thomas Hatton refused to reconvey, he differing with the other Executors of John Hatton, which of them should have the

Money, and threatened to enter and disturb the Plaintiffs Possession; and the other Executors of the Lady *Hatton* threaten to put the Bond of 1400 *l.* in Suit.

Therefore the Plaintiffs exhibited this Bill to have a Reconveyance on Payment of the Principal and Interest, &c.

The Defendant *Sir Thomas Hatton* insists by his Counsel, that the original Mortgage was made to his Brother *in Fee*, and so assigned to his Mother, and that he is Heir at Law to both *Mother* and *Brother*; and that he never agreed to enlarge the Time of Payment, either of Principal or Interest; so that upon Non-payment thereof, the Estate is become *absolute* in him.

But if the Court should admit the Mortgagor to *Redeem*, he is entitled to the Money in lieu of the mortgaged Lands descended on him, notwithstanding the Will of his Mother.

The Executors of the *Lady Hatton* insist, that the Money ought to come to them, for that *Hump. Gardner* the elder, by his Deed in which *Sir Tho. Hatton* joined, covenanted to pay the Money to her, or to her *Executors or Administrators*; and that he with the other Plaintiff gave the said Bond to the Performance of that *Covenant*; and therefore they insisted by their Counsel, that the said Money was Part of the personal Estate of the *Lady Hatton*, and ought to return thither, and that the Defendants who are her Executors, ought to have the same to enable them to perform her Will, by which the Residue of her Estate after her Debts and Legacies are paid, is devised amongst the Children of her Son *Sir Thomas Hatton*, and the Children of her Daughter *Davis*.

The Lord Chancellor decreed a *Redemption* on Payment of Principal, *Interest* and *Costs* of this Suit to the Defendants, the Executors of the *Lady Hatton*; and thereupon the other Defendant *Sir Thomas Hatton* shall reconvey to *Hump. Gardner* the elder and his Heirs, freed from all Incumbrances, &c.

John Combs, *Plaintiff*.

Anthony Kingston *and others, Defendants*.

THIS Bill was, to have a *Lease* made and executed to the Plaintiff of 5 Houses in *London*, according to a *Decree* made in the Court of *Judicature*, in *Clifford's Inn Hall*, which on the Defendant's Appeal to 7 Judges, according to the Act for rebuilding of the City after the Fire, was confirmed.

Where a Court is erected by Act of Parliament, and a Matter determined proper for

their Jurisdiction, it shall not be impeached in a Court of Equity.

The Defendant pleads, that *John Gifford*, under whom the Plaintiff claims, had an Estate for Life only in the Premises which the Plaintiff purchased four Years after the *Fire*; and the Reversion descended to the Defendant long before that Time; and that the Plaintiff's Title to rebuild is not comprised in the said *Act*; because at the Time of the *Fire*, he was neither *Landlord*, *Proprietor*, *Tenant*, *Lessee*, *Undertenant*, or *Occupier* of any the Houses, nor had any Estate or Right therein before they were burnt, or for *four Years after*; and avers that none of the Houses were rebuilt at the Time of the Death of *John Gifford*, the Cellars and Foundations thereof being only cleansed and raised as high as the Ground; and the Plaintiff forbidding the Workmen to proceed any farther in the Building.

Upon arguing this Plea, it was over-ruled by the Court, because the Merits of the Cause as to the *Jurisdiction of that Court of Judicature* was not examinable here, having already been settled by a *Decree* in the proper Judicature; and this Court is not to interpose therein, but only to see a Lease executed pursuant to that *Decree*, for that the Statute directs the Execution of all *Leases decreed* by that Court, to be enforced by the *Decree* of this Court.

And ordered an Answer in Chief.

Edward Flemming and Margaret his Wife,
Plaintiffs.

Francis Page and William Blaker, and others,
Defendants.

A Purchase made *pendente lite*, and after full Notice of a Trust, set aside in Equity.

THE Lands in Question were call'd the Manor of *Raymonds*, in the Parish of *Broadwater* in *Sussex*, and the Case was thus.

¶ The Plaintiff *Margaret* is Sole Daughter and Heir of *Thomas Bland*, who was Son and Heir of *George Bland* deceased, who in *June 1635*, having purchased the said Manor of *Anne Page*, took a Conveyance thereof in the Names of *Revell* and *Hart* in Trust for the said *George Bland* and his Heirs.

Revell the surviving Trustee by the Appointment of the said *George Bland*, convey'd the Premises to * *John Whitlock* and *Elizabeth Cooper*; this was on the 23 *June Anno 18. Car. 1.* and *Whitlock* dying, the said *Elizabeth* married one *Bayly*, in whose House *George Bland* kept all his Writings; and in the Year 1648, there he died; so that *Bayly* and his Wife *Elizabeth*

* This was decreed to be in Trust for *Bland* and his Heirs.

zabeth, possess'd themselves of all his said Writings, and are both since Dead.

But the said *Bayly* in his Life-time, by Contrivance with one *Surman* and *Statham*, about a Fortnight after the Death of the said *George Bland*, set up a *forged Will*, pretended to be made by the said *George*, whereby he devised some Part of his Estate to his Son *Thomas*, (the Father of the Plaintiff *Margaret*) but the greatest Part to *found and endow an Alms-house*, with a Clause, that if his Son *Thomas Bland* should not be contented therewith, but disturb his Executors, then a Moiety of what he had devised to his said Son, should be for the Use of the said pretended *Alms-house*; and by the said pretended Will the said *Bayly* and *Surman* were made Executors, who possessed themselves of the Premises, but neglected the Charity; and thereupon *Thomas Bland* the Son, not discovering that the Will was forged, sues the said Executors in *Chancery*, in behalf of the *Charity*, and *Bayly* by his Answer disclaimed any Interest to his own Use.

But *Bayly* afterwards finding the *Deed* by which *Revell* had convey'd the Premises to *Whitlock* and to *Elizabeth Cooper*, and *Whitlock* being dead as aforesaid; and he having married the said *Elizabeth*, he waved his Title as Executor by the said pretended Will, and set up a Title under that Deed for himself, in Right of his Wife; and thereupon *Surman* the other Executor Anno 1650, exhibited a Bill against him in this Court; and a Trial was ordered at the Bar of the *Common Pleas* upon this Issue, whether the Conveyance to *Whitlock* and *Elizabeth* was in *Trust* for the said *George Bland* and his Heirs, or not; and the Jury upon full Evidence gave a Verdict for the *Trust*, tho' at a former Trial there was a Verdict to the contrary; but it was against the Direction of the Judge, and now on a Rehearing, the Court decreed *Bayly and his Wife* to convey the Premises, and to execute the *Trust*.

But before the said Decree was made, *Bayly* (*pendente lite*) had conveyed the Premises to one *Blaker*, (the Defendant) and *Surman* died before any Execution of the Decree; and no Care was taken to revive it against *Bayly* and his *Wife*.

Thereupon *Blaker* enters upon the Premises, and receives the Profits, and *Thomas Bland* (not yet discovering the Fogery) exhibited another Bill against him, on behalf of the *Charity*, and made *Bayly and his Wife*, and others, Parties to the said Bill, and Confederates.

Blaker pleaded, that he was a Purchaser for a valuable Consideration paid to *Bayly and his Wife* without Notice of any Incumbrance; but it appearing that the Purchase was made *pendente lite*, that Plea was over-ruled; and in *Easter-Term* 17 Car. 2. a Decree passed against him to reconvey the Premises to the said *Tho. Bland*, and to deliver the Writings to him.

T t

But

But *Blaker* to evade this *Decree*, pretended that he had convey'd the Premises, and deliver'd the Writings to one *Page*, who set up a Title under Colour of an *old dormant Entail*, made by one of his Ancestors, who was Owner of this Estate, and of whom *George Bland* purchased the same, and hath brought several Bills here, and Actions at Law; but never discovered his pretended Title from *Bayly* or *Blaker* till of late, after the Death of the said *Thomas Bland*, who died about six Years since: And soon afterwards one *Wright* (another of the Defendants) by Combination with the rest, sued out a *Commission of charitable Uses*, and obtained a Decree on the pretended Will of *George Bland*, and got into Possession.

But the Plaintiffs having discovered the *Forgery*, put in Exceptions to the said Decree, and *Wright* put in his Answer, and the Plaintiffs reply'd, and upon Hearing the Cause in July 1674, and the forged Will produced, a Trial was directed upon this Issue, *whether the Writing produced was the real Will of Geo. Bland*; and the Jury found that it was not; and thereupon in May 1675, upon a farther Hearing the *Decree* of the Commissioners was reversed, and the Plaintiff restored to the Possession.

But *Page* having brought an Ejectment upon his pretended Purchase from *Blaker*, or upon the *old Entail*, the Plaintiffs now exhibited their Bill to be relieved against him, and to be quieted in their Possession; and that he may convey the Premises to *Margaret* and her Heirs, and to execute the Trust, &c.

Page pleaded his *Purchase* as before, and his Title by Virtue of the Entail, and answer'd that *Blaker* by his Order had conveyed the Premises to *Fletcher* and *Hobson* and their Heirs, in Trust for him and his Heirs; and that *Blaker* purchased of *Bayly* and his Wife, *without Notice of any Trust*, under which Purchase the Possession hath been enjoy'd; and that *Hobson*, who is the surviving Trustee, stands entrusted for him the said *Page* and his Heirs.

The Court declared, that the Conveyances to *Revell* and *Hart*, and from them to *Bayly* and *Elizabeth Cooper*, were only in Trust for *George Bland* and his Heirs, whose Grandchild and Heir the Plaintiff *Margaret* is; and that the several pretended Purchases by *Blaker* and *Page*, being made *Pendente lite*, were on purpose to defraud the Plaintiff *Margaret*, they being made with full Notice of the Trust; and that the pretended Purchase from *Bayly* and his Wife had been made, and contrived in Reference to the Setting up the said forged Will, and carried on by Fraud and Practice to the Prejudice of the Plaintiff's Inheritance, and her just Title.

Therefore it was decreed, that *Page* shall convey, and shall cause *Hobson* his Trustee to convey the said Manor and Premises (by such Deed as the Master shall approve) to the Plaintiff *Margaret*

garet and her Heirs, discharged of all Incumbrances by them, &c. and that she and her Heirs, and the said *Edw. Flemming* her Husband, in her Right shall hold and enjoy the same against *Page*, and all claiming under him, by Virtue of his pretended Purchase from *Blaker*, or by or under the Title of *Bayly* or *his Wife*, or any other, except the pretended Title under the said *Deed of Entail*.

And as to *that Entail*, if *Page* shall not, within a Year ensuing, evict the Plaintiff on such *pretended Entail*, then all the Writings, which he is now decreed to bring in upon Oath, shall be delivered up to the *Plaintiffs*, and a perpetual Injunction to quiet their Possession against *Page* and *his Heirs*, and all claiming by, from or under him or them, &c.

Anthony Earl of Shaftsbury, and John Tregonnell
on the Part of Sir John Hannam, Bart. an Infant, Plaintiffs.

Elizabeth Hannam, Widow, and Mother of the said
Sir John Hannam, Defendant.

THIS Bill was brought for the *Guardianship* of the Body, and Lands of the said *Sir John Hannam*, which the *Lord Shaftsbury* claims as great Uncle to him; and both he and the other Plaintiff *Tregonnell* likewise claim it by a Deed-Poll made by *Sir John Hannam* the said Infant's Father; and also that they and *Anthony Lord Ashley*, and *Tho. Penruddock*, Esq; were appointed by an Act of this present Parliament, to manage the Estate of the said Infant, during his Minority.

Guardianship of an Infant, disposed by the Father by Deed to one, and by Will to his Mother: The Will is a Revocation of the Deed.

And that the *Earl* having placed him at School at *Shelton* near *Oxford*, the *Lady Hannam* his Mother took him from thence by Force, and intended to carry him beyond Sea, for preventing whereof he prayed a *Ne exeat regnum*, and that the Infant might be redelivered.

To which the Lady his Mother by her cross Petition answered and alledged, that the sole *Guardianship* of the Child belonged to her by the last Will of her Husband; and that the Custody always remained with her, till the *Earl of Shaftsbury*, when he was *Lord Chancellor*, sent a *Serjeant at Arms* to seise the Infant; but that she hearing her Son was brought up in the House of a *Non-conformist*, where he was both hardly used and ill cloathed, she went to see him, and finding him in an ill Condition and consumptive, she brought him away without any Force, and hath

taken him into her motherly Care; and so justifies the Detaining him, and denied any Intention of carrying him *beyond Sea*; but that she would give any Security which could be required upon a *ne exeat regnum*, and that in the Deed by which the Plaintiffs claim the *Guardianship*, there was an exprefs Clause, that she should have the *Education of the Child*, which Deed was in its own Nature revocable; and therefore being revoked by the last Will of her Husband, she hath a good Title to the *Guardianship*: The Court declared, that in this controverted Point for the *Guardianship* of the Infant, the *Lady* his Mother seem'd to have a great Probability of Law on her side; and therefore continued the *Guardianship* with her until she should be evicted thereof by due Course of Law; and the rather because there did not appear to be any Misdemeanor or undue Proceeding in taking the Infant from School.

But because it was insinuated by the Counsel for the Plaintiffs, that the *Lady Hannam* was a *Papist*, (which she utterly denied) therefore unless she would dispose her self to receive the Sacrament according to the Rites of the *Church of England*, before the End of the next Term, and produce a legal Certificate thereof, the Court would then consider to remove the Infant into such Hands as might secure his *Education in the Protestant Religion*; and farther order'd, that the said *Lady* should before *Christmas* next enter into a *Recognisance* in the Penalty of 1000 *l.* conditioned not to send or willingly permit the Infant to be sent *beyond Sea*, nor to be married without Leave of the Court; and that until Default of receiving the Sacrament as aforesaid, and giving such *Recognisance*, the Possession of the Infant shall remain with the *Lady* his Mother *de bene esse*, and she protected therein against all Force and Violence.

Price Devenreux and Walter Devenreux Infants,
by Samuel Sands, Esq; Guardian, Plaintiffs.

George Devenreux, Vaughan Devenreux, and Simon Thelwell, Defendants.

Bill by the Issue in Tail, to discover a Settlement; the Defendants plead, that the Plaintiffs are Bastards; a Trial at Law was directed upon that Point, and that the Defendants pay the Plaintiff 50 *l.* to carry it on; but the Money not being paid, nor the Trial had the Plea, way over-ruled.

Sir

Sir George Devenreux, who was likewise the great Grandfather of the said *Infants* by the Father's side, and the Defendant *George Devenreux* his Son, who was Grandfather of the said *Infants*, was seised *in Fee* of other Lands of the yearly Value of 2000*l.* and on a Treaty of Marriage between *George the Defendant*, and the said *Bridget*, Settlements were made of those Estates in Manner following.

ff. The said *Arthur Price's* Estate was by Indenture dated in September 1638, and by *Fine and Recovery* settled upon himself for Life, then to his Wife for Life, then to the said *George* his Son in Law for Life, then to *Bridget* for Life, then to the first Son of the Bodies of the said *George* and *Bridget* in Tail Male, and so to all other their Sons successively.

The Estate of the said *Sir George Devenreux* was settled in the same Manner as that of the said *Arthur Price*, (*viz.*) to them and their Wives, and the Survivor for Life, Remainder in Tail Male upon the Issue of the Bodies of the said *George* and *Bridget*.

George had Issue by the said *Bridget*, his eldest Son *Price Devenreux* the Father of the Plaintiffs, who was killed at Sea, leaving the Plaintiffs very young, and their Grandfather *George* still living.

Who after the Death of his eldest Son *Price Devenreux* as aforesaid, intending to advance *Vaughan Devenreux* his second Son, and combining with the other Defendant *Thelwell* for that Purpose, who was a Party, and had Counterparts of the said Settlements; and to disinherit the said *Infants*, set on Foot other Titles, and concealed the said Settlements; and pretend that the Plaintiffs are *Bastards*, who say that they are the lawful Sons of the said *Price Devenreux*, and claim the Benefit of the said Settlements, and a Discovery thereof.

The Defendants in their Answer say, that they believe the Plaintiffs are *Bastards*, and *George Devenreux* by his Plea insists, that he ought not to discover the Conditions of his Estate, till the Plaintiffs have proved that they are Legitimate.

The Court ordered a Trial at Bar of the Court of Common Pleas, the next Term, by a *Middlesex Jury*, on this Issue, (*viz.*)

Whether the Plaintiff *Price Devenreux* was born in lawful Wedlock, and the Plaintiffs here to be Plaintiffs at Law; and the Defendant to name an Attorney to appear and plead; and that an indifferent Jury might be had, the Sheriff was to attend the Pro-notary with the Freeholders Book, who was to nominate 48 able and sufficient Persons, and each Party to strike out 12, and the rest to stand and to be of the Jury; and likewise each Party to make Use of the Depositions already taken of such Persons who are dead, or not able to attend the said Trial; and that the Defendants shall pay the Plaintiff 50*l.* by the End of the next Term,

Term, the better to enable the Plaintiff to proceed to the said Trial, which Money shall be deposited in the Hands of the Plaintiff's Clerk in Court.

But the Defendants did not pay the 50 *l.* nor perform the said Order; whereupon the Plaintiff applied again to the Court to have the Cause reheard, which was done, and the Court over-ruled the Defendant's Plea as if it had been disproved; and ordered that the Defendant perfect his Answer upon *Interrogatories*, and that the same be brought into Court, and that the Plaintiffs be placed with *Mr. Oakley*, being nominated by the Defendant, as an indifferent Person, and that he the Defendant *George Devenreux* shall allow them sufficient Maintenance at his Charge, and a Commission to take his Answer to the *Interrogatories*, &c.

Ebsworth and Mansell, and many others, Plaintiffs.

John Kent and several others, Defendants.

An Agreement between the London and Country Creditors of a Bankrupt, decreed to be performed.

THE Plaintiffs lived in *Gloucestershire*, where also one *Blithe* did live, who owed them Money, and having committed some Act of *Bankruptcy*, he afterwards came to an Account with the Plaintiffs, and sold them several Parcels of Goods in Satisfaction of their Debts.

The Defendants lived in *London*, to whom also the said *Blithe* was indebted, and they having employed a Person to discover his Estate in the *Country*, and how it had been disposed, and to procure the same to be distributed equally amongst all his Creditors; it was at last agreed amongst them, that the Plaintiffs should wave the Disposal of the Goods to them already made by the said *Blithe*, and that they should have an equal Distribution with the Defendants in Proportion to their respective Debts; and that an Inventory should be taken, and an equal Distribution made; and for that Purpose that a *Commission of Bankruptcy* should be taken out at *London*, and executed there, and all the said Debts put in *Hotchpot*.

Accordingly a *Commission* was executed at *London*, but without giving Notice thereof to the Plaintiffs, or any Commission sent into the *Country*, to join with the others therein, in order to a perfect Discovery of the said *Blithe's* Estate, as agreed on.

And afterwards the Defendants prevailed with the *Commissioners in London*, within a Month after the Execution of the *Commission*, to make an *Assignment and Dividend* of the said Bankrupt's Estate, contrary to the said Agreement, intending thereby

to exclude the Plaintiffs, and now refuse to let them come in for their Shares, tho' they have offered to pay their *Contribution-Money* and Proportion of the Charges of the *Commission*; but have brought Actions of *Trover* for the Goods so sold and delivered to the said *Blithe*.

To be relieved against which Actions the Plaintiffs have brought this Bill, and that the said Agreement might be performed, and the *Dividend* made amongst the Defendants be set aside, and that the Plaintiffs may be let in to have an *equal Distribution* with them.

All which Matters appearing to the Court, tho' the Defendants denied the said Agreement; yet such Relief was decreed as the Plaintiffs had pray'd.

Allen Banks, *Son and Executor of William Banks,*
Plaintiff.

Amy Banks, *Widow of the said William,*
Defendant.

THE Defendant having got great Part of the Estate of her late Husband *William Banks* the Testator, and concealing the same, the Plaintiff exhibited his Bill to call her to an Account, suggesting that by the *Custom of the City of London*, he is entitled to a great Part thereof, after Debts and other Duties are discharged. Where a Release is pleaded, and decreed to be an issuable Plea, and not in Bar.

The Defendant pleads, that after her said Husband's Death, she exhibited an Inventory on Oath, and several Accounts concerning his Estate into the *Court of Orphans*, and had an Allowance thereof, and a Discharge by the said Court. Custom of London concerning Orphans.

That afterwards she received more Money of the said Estate, and then the Plaintiff and his *Brothers Richard* and *John* being of Age, she on 23 *April* 1670, accounted with them, and paid to each of them his Share; and by their several *Releases* dated on the same Day, they discharged the Defendant of all *Actions, Suits* and *Demands* whatsoever relating to the said Account.

The Court was of Opinion, that this was an issuable Plea, and not in Bar, and that the Plaintiff might reply to it, and take Issue as he should be advised without *Costs* on either side.

Thomas Chelsam *and his Wife, Plaintiffs.*

Katharine Austin, *Widow, Thomas Austin her Son,
and Anthony Smith, Son and Administrator of
Robert Smith, Defendants.*

Lease for a
long Term
rendering
Rent; the
Lessee en-
tered and
granted an
Annuity out
of it; the
Annuity being in Arrear, the Lessee
confessed Judgment to the Grantee of the
Annuity; and the Rent being in Arrear, the Lessor entered for a Forfeiture in Non-payment,
and made a new Lease to another, when both of them had Notice of the said Annuity and
Judgment.

ABOUT the Year 1661, *Katharine Austin* in her own Right, and as Guardian to *Thomas* her Son, for a valuable Consideration, made a Lease of several Tenements in *Hoxton in Middlesex*, to one *Houghton* for Life, and for 20 Years after, at 50 *l.* per Ann. Rent.

Decreed that the new Lease should be set aside, and the original Lease revived.

The Lessee enter'd, and 30 Aprilis 1662, in Consideration of 200 *l.* granted an Annuity of 30 *l.* for the Life of the Wife of the Plaintiff *Thomas Chelsam*, payable quarterly, with a Clause of Distress for Non-payment, which at Lady Day 1671, being in Arrear 240 *l.* the said *Houghton* in *Hillary-Term* 1672, confessed a Judgment to the Plaintiff *Thomas Chelsam* for 2000 *l.* to secure him against several Bonds, in which he became bound with the said *Houghton* as Surety, to the Value of 1300 *l.* and to secure some other Debts which *Houghton* owed him.

In *Michaelmas-Term* 1673, the Plaintiff *Chelsam* sued out an *Elegit* upon the said Judgment, and extended the Premises, which were appraised and valued, and delivered by the Sheriff to the Plaintiff to hold the same, till his said Judgment should be satisfied.

But the Defendants have set up several Titles, pretending the same were precedent to *Houghton's* Judgment given to the Plaintiff, and that his Lease was forfeited to *Katharine Austin* for Non-payment of Rent, and that she entered and was possessed, and made a new Lease to *Smith*; whereas before any such Entry made, the Plaintiff acquainted the said *Katharine Austin* with the said Judgment and Extent, and offered to pay her all the Arrears of Rent.

And that *Smith* the new Lessee had likewise Notice of the said Judgment; for before he took the said Lease, the Plaintiff *Chelsam* had delivered an *Ejectment* to him as Tenant in Possession; and therefore prayeth that the original Lease granted to the said *Houghton*, may be set up again for the Benefit of the Plaintiffs; and

and that he may be in the same Condition as before the new Lease was granted.

Houghton by his Answer confesses the Annuity granted to the Wife of the Plaintiff, and that he had Judgment against him for 2000*l.* but that the Plaintiff agreed it should not be used against him, but to prevent other Creditors.

The *Austins* admit the Lease to be made to *Houghton*, and say that the Rent was in Arrear at *Christmas* last 252*l.* 10*s.* 0*d.* they admit likewise that *Chelsam* the Plaintiff acquainted them with his Annuity of 30*l.* per Annum, and that long before *Katharine Austin* entered, she acquainted him with what Rent was in Arrear.

Then they set forth, that upon *Smith's* Paying 32*l.* 10*s.* 0*d.* Part of the Rent Arrear, they demised Part of the Premises to him for forty-one Years, under the Rent of a Pepper-corn; and that upon his Payment of 120*l.* more, the Remainder of the said Arrears, they demised to the said *Smith* the Rest of the Premises for ninety-nine Years, if *Houghton* should so long live, and 21 Years after his Death at the Rent of 50*l.* per Annum, except the three last Years, for which a Pepper-corn was only to be paid.

Smith confesses, that *Houghton* had a prior Lease of some Part of the Premises; but that he the said *Houghton* had granted an Annuity out of the same of 8*l.* per Ann. to *Francis Reddis* and *John Staines*, before he granted the Annuity of 30*l.* per Ann. to the Plaintiff's Wife, which Annuity of 8*l.* per Annum the Defendant *Smith* purchased; and also another Annuity of 10*l.* per Annum granted to one *Coney* and his Wife, and to the Survivor, &c.

And confesses the new Lease made to him by *Katharine Austin*; but that he heard nothing of the Plaintiff's Annuity till lately.

The Plaintiffs insist by their Counsel, that *Smith* having Notice of their Annuity and Judgment before the new Lease was granted to him, that such Lease was made on purpose to defeat their Title; and therefore he ought to account for the Rents and Profits ever since he hath been in Possession.

The Court being satisfied, that the *Austins* had Notice of the Plaintiffs Title before the Entry was made for Non-payment of Rent, and before the new Lease granted to *Smith*, decreed that the original Lease granted to *Houghton* for Life, and 21 Years after, be revived during that Term, for the Benefit of the Plaintiffs *Chelsam* and his Wife, as if it had never been forfeited; and that the *Austins* execute a new Lease to the Plaintiffs accordingly, and of the same Date, Covenants and Rent the same, to be subject to all prior Estates which are to remain, and be in the same Condition as before the Forfeiture or Surrender of the old Lease.

U u

That

That the new Lease made by *Katharine Austin* to *Smith*, shall be cancelled, and he to account for all the Rent ever since he hath been in Possession under that Lease; but that he shall enjoy so much of the Premises as were granted by *Houghton*, to secure the Payment of 8 *l.* Annuity to *Reddis* and *Staines*, before the Annuity of 30 *l.* granted to the Plaintiffs, &c.

Henry Flavell, *Plaintiff*.

Martha Ball, *Defendant*.

Feme Covert took a Bond in the Name of her Servant, but in Trust for herself; her Husband died, and the Obligor paid the Money to his Administrator.

THE Plaintiff *Flavell* being possessed of the House and Lands in the Bill, by Virtue of a Lease for his own Life, made to him by *James Earl of Sussex*, treated with the *Countess* to put in his Wife's Life; for which he was to give 100 *l.* which Money the *Earl* gave the *Countess*, and she accepted a Bond for Payment thereof; but being a *Feme Covert*, she could not take it in her own Name; but the Plaintiff gave Bond to the Defendant *Ball*, for the Payment of the Money in Trust for the *Countess*.

Sometime after the *Earl* died, and the *Countess* relinquished the Administration to *Francis Lord Brudenell* and his *Lady*, who was the only Sister and Heir of the said *Earl*, who thereby became entitled to the Money, and demanded the same, and the Plaintiff paid it to the *Lord Brudenell*.

And now the Defendant and the *Countess of Sussex* both claim an Interest in the Money; and the Defendant denies that the Bond was made to her in Trust, but it was for her own Use, and refuseth to redeliver it up.

Bill ordered to be amended, and to make proper Parties.

It appearing by this Case, that the Plaintiff's Equity lay against the *Lord Brudenell* and his *Lady*, to whom the Money was paid, and that they were not made Parties to the Bill; whereupon the Court ordered, that the Plaintiff should amend his Bill, and to make them Parties, and in the mean Time the Injunction should be continued.

Francis Corey, *Plaintiff.*

Thomas Corey, *Defendant.*

BC. the Father of the Plaintiff, about *fifty-eight Years* past, entered into a *Statute* of 800*l.* to T. C. the Father of the Defendant, to indemnify him against 400*l.* for which he stood bound with the said B. C. the *Cognisor*, who afterwards paid the said Debt; and the Cognisee was never damnified, nor his Heirs, Executors, &c. by reason thereof; but yet the Defendant hath lately extended the Plaintiff's Lands, &c. against which he brought this Bill to be relieved.

The Plaintiff relieved against an Extent upon an old dormant Statute.

The Defendant answers, that he believ'd the *Statute* was given for Money lent, and as to the *Length of Time* in not putting it in Execution, he said, that he found a Writing containing an Agreement, that the Statute should not be executed in the Lifetime of the Cognisor; and that the Plaintiff sometime since being bound for the Defendant in borrowing Money, he the Defendant (*rebus sic stantibus*) did not dare to demand the Money due on the Statute till he cleared his own Debts.

But the Court ordered the Statute to be vacated, and Satisfaction acknowledged, and that the Extent sued out, should be set aside; and all Amerciament against the Sheriffs, for not returning the Extent discharged; and a perpetual Injunction to stay all Proceedings thereon.

Mary Keen *Widow, and others, Plaintiffs.*

John Sparrow *and others, Defendants.*

IT appearing by this Bill, that the Lands therein mentioned, which were mortgaged to the Plaintiff's Husband for 1200*l.* were *Copyhold*, and never surrendered, so that for want thereof the Title of the *Mortgagee* is *defective* at Law; and it appearing by the original Agreement, that the same were intended as a Security for the Payment of the Money; the Court decreed a *Surrender* accordingly as soon as possible, and that the Plaintiff should consent after the Surrender so made, that the Defendant might *redeem* upon Payment of the Principal and Interest at any Time within 7 Years.

Copyhold was mortgaged, but no Surrender made; the Court decreed a Surrender should be made.

John Davis, *Plaintiff.*

Cornelius Degelder *and others, Defendants.*

All the Creditors except the Defendant, agreed to accept the 5 s. in the Pound, and took the Plaintiff's Bond for the same; and the Defendant promised to do the like, but su'd for his whole Debt; and the Plaintiff brought a Bill to be relieved, but the Bill was dismissed.

THE Plaintiff owing several Sums to the Defendants, and to several others his Creditors, an Agreement was, made at a certain Meeting of all of them, to accept 5 s. in the Pound in full of their respective Debts, to be secured by his Bond to pay 2 s. 6 d. in four Months Time, and the other Moiety in 5 Months following; and the Plaintiff alledges, that all his Creditors accepted such Bonds, and gave the Plaintiff Releases; and that the Defendant likewise promised to accept the said Composition, but instead thereof, hath brought his Action at Law for 100 l. being his whole Debt; and therefore the Plaintiff prayeth Relief in this Matter.

The Defendant insists, that the Plaintiff is able to pay the whole Debt, and that he (the Defendant) never promis'd to take 5 s. in the Pound, &c. and if he was to come into any Composition, it was to pay 5 s. in the Pound ready Money, and 15 s. more in the Pound 7 Years then next following.

The Court dismissed the Bill as not proper for Relief.

John Huntingdon, *Clerk, and William Wells,*
Gent. Executors of John Tompkins, Plaintiffs.

Mark Howes, *Defendant.*

Et econtra,

Mark Howes, John Huntingdon, William Wells,
and William Ashly, Defendants.

An Agreement for a Purchase discharged, but with moderate Costs.

ONE *Tompkins* having made *Huntingdon* and *Wells* his Executors, in Trust to sell the Lands in the Bill, for the Payment of his Debts, they treated with the Defendant *Howes* about the same; and by a verball Agreement it was concluded between them, that *Howes* should pay 540 l. for the Purchase at the Times, and in such Proportions as in the said Bill; and that *Howes* was immediately to pay 200 l. to the Plaintiffs, for which they were to give Bond to repay it with Interest to *Howes*; but that

that if the Bargain went on, then it was to be Part of the Purchase-Money, and the Bond was to be delivered up and cancelled.

Pursuant to this Agreement, Conveyances were drawn, but then *Howes* refused to proceed on Pretence of Incumbrances, and pressed the Repayment of the 200*l.* and Interest; which the Plaintiffs afterwards borrowed of another Person, in order to pay *Howes*, and accordingly did tender it to him several Times, but he as often refused to accept it; insisting on his *Charges*.

Since which Time the Plaintiffs sold the Lands to one *Asbby* (the Defendant to *Howes*'s cross Bill) for 540*l.* which *Howes* understanding, reassumed his former Agreement, pretending that it was executed in Part by Payment of the 200*l.* which the Plaintiffs are willing to pay back again to *Howes* with Interest, but he refuses; so that the Plaintiffs cannot perfect their Agreement with *Asbby*.

Therefore they exhibited this Bill to discover the Agreement with *Howes*, and whether he did revoke it, and declare he would not proceed in the Purchase; and that he may deliver up the Bond of 200*l.* upon Payment of the Money and Interest to the Time of the first *Tender*, &c.

Howes by his Answer owns the Agreement, but denies that he revoked it, and affirms that he was willing to go on in the Purchase, upon clearing the Incumbrances; and that the Bond was taken as a Security only, in case *Huntingdon* should die before the Conveyances were executed; and that the 200*l.* was paid as Part of the Purchase-Money, and that he could not safely proceed till the Incumbrances were discharged, and named some of the Incumbrances, and deny'd the *Tender*.

And by his cross Bill he affirms and denies the same Thing, and pray'd that *Asbby*'s Purchase may be set aside, the same being made with *Notice* of the former Agreement.

But *Asbby* deny'd any *Notice* other than the common Report that *Howes* had bought the Lands, but that *Huntingdon* told him, that *Howes* had *receded* from his Agreement; whereupon *Asbby* agreed for the Purchase, and had paid 300*l.* of the Purchase-Money, having articul'd with *Huntingdon*, &c. for the Sale to him, and given a Bond of 1000*l.* for Performance of the Articles; so that he is a Purchaser *Bona fide*.

It appearing to the Court, that *Howes* had waved his Agreement, (it being only by *Parol*) and refused to receive his 200*l.* and that the Persons who had any real Incumbrances offer'd to join in the Conveyance to him; but he declar'd that he had laid out his Money elsewhere to a better Advantage.

The Court decreed, that the Agreement with him should be discharged, and that he should deliver up the Bond to be cancelled

upon Payment of the Principal and the Interest, due to the Time of the *Tender*; and that *Huntingdon* and *Wells* do perfect their Agreement with *Ashby*, and *Howes's* Bill against him to stand dismissed with moderate *Costs*.

Term. Sanct. Hill.

30 Car. 2. Anno 1677-8.

Jacob Griffith *and* Katharine, *Executors of* Abell Griffith, *Plaintiffs*.

Arthur Bateman *and* Mary *his Wife*, *Defendants*.

Plea and Demurrer for that neither Executor or Administrator are made Parties.

THE Bill was, to have the Defendants discover and account for the Estate of one *James Phillips*, and to have the same applied to satisfy a Debt of 600*l.* pretended to be due from the said *Phillips* to the Plaintiff's Testator.

The Defendants plead, that they are not *Executors or Administrators* of the said *James Phillips*, nor so charged by the Bill; and therefore not accountable for any of his Estate in case they had any in their Hands.

And demur for that the Executors or Administrators of the said *James Phillips* are proper Persons with whom to contest this Debt, who may possibly prove that it hath been discharged, so that if not made Parties, the Defendants may be doubly charged; and therefore demur for want of proper Parties.

The Court allowed both the Plea and Demurrer, and that the Plaintiffs might mend their Bill as they should be advised, but without *Costs*.

Hart, *Plaintiff*.

Hergard, *Defendant*.

THIS Bill was, to have an Estate conveyed to the Defendant, Plea that he and mention'd to be in Consideration of 250*l*. but that it was a Purchaser for a valuable Consideration, and denied a Trust, &c. was made *in Trust for the Plaintiff*, and no Money ever paid by the Defendant, it being on Purpose to prevent other Creditors of the Plaintiff from having any Share of the Estate; therefore the Plaintiff prays now a Reconveyance, &c. and the Securities delivered up, and likewise a Bond of 500*l*. which the Plaintiff gave the Defendant for quiet Enjoyment.

The Defendant pleads, that he really lent the Plaintiff 250*l*. for which he gave the said Bond in the Penalty of 500*l*. which not being repaid, or any Part thereof, the Plaintiff did convey the Lands absolutely to the Defendant and his Heirs, and when the Conveyances were executed, he delivered up the said Bond to the Plaintiff, and took a new Bond from him for quiet Enjoyment; and at the same Time the Plaintiff gave the Defendant a *Release* of all his Right, &c.

This being the Case, the Court order'd the Defendant directly to answer the Plaintiff's Bill, and *Costs* were saved; and that if the Defendant did positively swear, that he really lent and paid to the Plaintiff 250*l*. before he enter'd into the Bond for securing the same; and that it was all due and unpaid at the making and executing the Conveyance mentioned in the Plea, then the Plea should be allowed good.

Boyce, *Plaintiff*.

Lomax and his Wife, *Defendants*.

THE Plaintiff exhibited his Bill to be relieved against a *Writ of Enquiry* of Damages on a Judgment obtained at Law, and suggested that the said Writ was executed without any *Notice* given to him, or to his Attorney, and that the Judgment was not fairly obtain'd.

plead and demur for that the Remedy is proper at Law.

The Defendants demurred, for that if any Injury was done to the Plaintiff, his Remedy was proper at Law.

And

And they plead, that they brought their Action at Law against the Plaintiff, and have fairly proceeded therein to Judgment which they have obtained, and that the Matter for which Complaint is now made is proper at Law; and therefore this Court ought not to take Conusance thereof.

The Court allowed both the Plea and Demurrer.

John Fith, *Plaintiff*.

Sir William Courtney, *Bart. Defendant*.

Plea that a Fine was levied, and deed to lead the Uses, under which the Defendant and his Ancestors had quiet Enjoyment for sixty Years, &c.

THIS Bill was, to discover the Deeds and Writings concerning the Lands in the Bill mention'd; which the Plaintiff claimed as Son and Heir of Sir *John Fith*, by a *Deed* or some Settlement made by the said Sir *John Fith*, to the Use of himself and the Heirs *Males of his Body*; and that he died without Issue, &c.

and his Ancestors had quiet Enjoyment for sixty Years, &c.

The Defendant pleaded, that *Mary* the sole Daughter and Heir of the said *John Fith*, levied a Fine, and made a Conveyance to the Ancestors of the Defendant and their Heirs, under which it hath now been enjoy'd for 60 *Years* and upwards.

And *demurs* for that the Plaintiff hath not set forth the Time when any *Settlement* was made by Sir *John Fith*, under which he claims a Title, nor the Date thereof; nor that the Plaintiff, or those under whom he *claims, ever were in Possession of the Premises* for the Space of 60 *Years* before the Bill exhibited, nor when they were in Possession of the *Premises now in Question*.

The Court allowed both the Plea and the Demurrer.

The Attorney General, on the behalf of the Poor of Ashford in the County of Kent, Plaintiff.

Sir Thomas Twisden, Bart. Roger Twisden, Esq; Son and Heir of the said Sir Thomas, Defendants.

The Plaintiff did not make Executors or Administrators Parties; therefore ordered to amend his Bill.

THIS Bill was in Nature of an Information, to be relieved as well against a Decree of *Commissioners of charitable Uses*, as to discover the Profits of the Lands in the Bill, in order to the Satisfaction

Satisfaction of a Charity, being a Sum of 200*l.* given by the Will of *Sir John Mills*, dated November 9 Anno 1625, in these Words.

It. That if John Mills or J. D. or either of their Heirs should enjoy the Lands (in the Bill) then such Person should in respect thereof pay for the Relief of the Poor of Ashford in Kent 200 l. to be employed in a Stock for their Maintenance, and to be paid within two Years after they should be in Possession.

After the Death of the said Testator, his Son *Sir John Mills* sold the Lands to *Sir Thomas Twisden*, who at the Time of the Purchase, and before that Time, had full Notice of this Devise of 200 *l.* having perused the Will, and had a Copy thereof, which Notice was plainly proved.

But the Counsel for the Defendants insisted, that admitting *Sir Tho. Twisden* had Notice of this Charity, yet it ought not to be set up at this Time against him; for that the Plaintiffs Demand thereof is after forty Years quiet Enjoyment of the Lands, and long before he purchased the same; and it doth not appear but this 200*l.* might be paid in all that Time; and that *Sir Thomas* being a Purchaser for a valuable Consideration, hath since his said Purchase settled the Lands upon the Defendant *Sir Roger Twisden* his Son in Marriage, who hath quietly enjoyed the same many Years without any Demand; and there is no Pretence that he had any Notice of this Charity.

Demand after quiet Possession for 40 Years, but with Notice of the Incumbrance.

Therefore the Plaintiffs ought not to have any Decree, and the rather, because they ought to have made the Executors or Administrators of *Sir John Mills* Parties to this Suit, who enjoy'd the Premises several Years after the making the Will, and before the Defendants Purchase who might make it appear, if they were before the Court, that the Money hath been paid; and so they offered to try it at Law, upon the Point of Notice in the County where the Witnesses were known, and who had sworn that *Sir Tho. Twisden* had Notice of the Charity.

But the *Lord Chancellor* would not direct a Trial at Law, or make any Decree in this Case, because there were not proper Parties before the Court.

Besides the Demand now made was not in the Nature of a Rent-Charge, which will always be chargeable on the Land, into whose Hands soever the same shall come; but it was of a Sum of Money to be paid together and at one Time; and this Land having been enjoy'd by several Persons since the Will it doth not appear, but that the Money might be already paid.

Difference between a Demand of a Sum in Gross and a Rent-Charge.

Therefore it was ordered, that the Plaintiff might be at Liberty to amend his Bill, and to make proper Parties, and to bring the Cause to a Hearing again, as he should be advised.

Ford Lord Grey, *Plaintiff.*

S. C. p. Cha. Cas.
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Katharine Lady Grey, *Widow of Ralph late Lord Grey; Ralph, Charles, Katharine, Sons and Daughters of the said Ralph Lord Grey and Katharine, by the said Katharine their Mother and Guardian; Roger North, Michael Heneage, Andrew Harington, John Middleton, Trustees of William Lord Grey, Sir John Pelham, Sir Michael Heneage, and Geo. Eales Clerk, Trustees of Ralph Lord Grey, Defendants, and econtra.*

The Father purchased Lands in the Name of his Son without declaring any Trust: decreed this shall be taken as an Advancement of the Son, and no Trust shall be implied for the Father.

William *Ld. Grey* being in his Life-time seised in Fee of the Manors of *Epping* and *Gosfeild* in *Essex*, and of several other Lands thereabout; and intending to settle the same to remain in his Blood and Family, did, by *Lease and Release*, the one dated 31 *May*, and the other 1 *June* in the 24th Year of *Car. 2.* and by *Fine* and other good Assurances in the Law, settle the Premises upon *Isaac Warren* and *James Clerke*, and their Heirs, to the Uses and upon the Trusts following.

§. To the Use of himself for Life, without Impeachment of Waste, and after his Death, the said Manors of *Gosfeild* and *Epping*, to the Use of *Roger North* and the other 3 his Trustees for 99 Years upon Trust, as herein after-mentioned.

And after the Determination of the said Term for Years, then to the Use of *Ralph Lord Grey* for Life, without Impeachment of Waste; Remainder to the Use of the said *Warren* and *Clerke*, to preserve Contingent Estates; Remainder to the Plaintiff *Ford Lord Grey*, without Impeachment of Waste; Remainder to his Sons in Tail, Remainder in Fee to the right Heirs of the said *Wm. Lord Grey*.

The said Term of 99 Years was by the said Deed declared to be in Trust for raising 6000*l.* a-piece for the said *Ralph* and *Charles* the Infants, and 100*l.* yearly to each of them, until they attained the Age of 16 Years; and afterwards 200*l.* to each of them yearly, until their Ages of 21 Years, for their Education and Maintenance.

Afterwards the said *Wm. Ld. Grey* made his Will, and thereby devised to his Grandaughter *Katharine* the other Infant, 4000*l.* to be paid to her at 21 Years of Age, and 100*l.* yearly for her Maintenance till 21; and having made *Ralph Ld. Grey* Executor, he soon after died, leaving sufficient Assets to satisfy all his Debts;

Debts, and also the said Legacies with a great Overplus; and afterwards the said Executor proved the Will, and possessed himself of the said Estate, and by the Permission of the *Trustees* did enjoy all the Lands in *Essex*, and received the Rents and Profits thereof, which he ought to have employ'd towards the Discharge of the said Portions.

The said *Ralph Lord Grey* died about *June* 1675, leaving the Plaintiff *Ford Lord Grey* his Son and Heir, having first made his Will, and the Defendant the *Lady Katharine* his Executrix, who proved the same, and ought to be accountable for the Rents and Profits received by her Testator her Husband; and to pay the same towards the Discharge of the said Portions of 6000 *l.* a-piece.

But the Defendants pretend, that *Wm. Lord Grey* had no Power to make such Settlement as aforesaid; because the Manor and Lands of *Gosfeild* were about twenty Years past, purchased in the Name of his Son *Tho. Grey*, who dying without Issue in the Life-time of *Lord Wm. Grey* his Father, the said Manor descended to *Ralph Lord Grey* his Brother, who by Indenture of *Lease and Release* dated 6 and 7 *Jan.* 1674, conveyed the same to *Sir Jo. Pelham*, (and the two other Trustees with him) and to their Heirs upon Trust, that out of the Rents and Profits, or by leasing or Sale thereof, they should raise Monies to pay all his Debts and such Legacies as he should by his Will devise; and when that was done, then his Trustees should stand seised of the Residue to the Use of such Persons, and for such Estates as he should direct by his said Will, and for want of such Appointment, then in Trust for his Heirs; and that if more Money should be raised than what would pay his Debts, then the Trustees were likewise to pay the same as he by his Will should appoint, and for want of such Appointment, to his Heir, in lieu of the Inheritance, with a Power of Revocation, &c.

That on the same Day *Ralph Ld. Grey* made his Will, and thereby devised 2000 *l.* to the Defendant *Katharine* the Plaintiff's Sister the Infant, to be added to her 4000 *l.* which was to be raised together with the said 4000 *l.* out of the Manor of *Gosfeild*, he the said *Ralph* having settled the same upon his Trustees for that Purpose; and likewise he devised to *Ralph* and *Charles* the other Infants 2000 *l.* a-piece, to be raised out of the said Manor, and to be paid at their respective Ages of twenty-one Years.

So that the Defendants now insist, that the said Manor is charged with 6000 *l.* Legacies by the said *Ralph Lord Grey*, and with 4000 *l.* more to the Defendant *Katharine*, by her said Grandfather *William Lord Grey*; and that it ought not to come to the Plaintiff *Ford Lord Grey*, till the said Legacies and his Debts are paid.

Whereas the Plaintiff insists, that the said Manor was purchased by *Wm. Lord Grey* with his *proper Money*, and that the Name of *Tho. Grey* was only used in *Trust for the Lord William Grey*, who was always in Possession, and received the Rents as long as he lived, as well in the Life-time of his Son *Thomas*, as afterwards; and was absolute Owner of the said *Manor* and Lands of *Gosfeild*.

But notwithstanding the same, the Trustees of *Ralph Ld. Grey* pretend they will sell the Manor of *Gosfeild* so purchased in the Name of *Thomas Grey* as aforesaid, and with the Monies arising by such Sale, will pay his Debts and the Legacies given by his Will; and if so, then the 6000 *l.* a-piece given to *Ralph* and *Charles* the Infants by their Grandfather *Wm. Lord Grey*, will be charged on the Manor and Lands in *Epping*, exclusive of *Gosfeild*; whereas both the said Manors were charged therewith by the Settlement of *William Lord Grey*.

But no Care hath been taken to apply the Rents and Profits subject to the said Trust since the Death of *Wm. Lord Grey*, according to his said Settlement, but the same have been directed to other Uses; and therefore the Plaintiff exhibited this Bill to be relieved.

The Defendants by their Counsel insist, that the Manor of *Gosfeild*, purchased in the Name of *Tho. Grey*, ought not to be subject to the Trust created by *Wm. Lord Grey*; because by *Fine* and other Conveyances it was purchased in the Year 1653, for 13000 *l.* paid by the said *Thomas*, and conveyed to him and his Heirs by the *Lord Dacres*, who gave the said *Tho. Grey* a Receipt for the Money; so that the Manor of *Gosfeild* became the particular Inheritance of the said *Tho. Grey*, there being no Trust declared in any of the Conveyances; and that all the Courts of the said Manor have ever since been kept in his Name.

The *cross Bill* brought by those who were Defendants to the Bill of *Ford Lord Grey*, and his Answer being to the same Purpose as his Bill; upon the whole Matter the Point left for the Determination of the Court was singly thus:

ff. Whether the Purchase of the Manor of *Gosfeild* by the *Ld. William Grey* in the Name of his Son. *Tho. Grey* was a Trust for the Father, or an *Advancement for his Son*.

The Court declared, that it was a Preferment for the Son, and not a Trust; because between *Father and Son*, the *Blood* is a sufficient Consideration to raise an *Use to the Son*; therefore this differs from the Case where a Purchase is made in the Name of a Stranger; for in all Cases whatsoever where a Trust shall be between the *Father and Son*, contrary to the Consideration and Operation of Law, the same ought to appear upon very plain and coherent and binding Evidence; and not by any Argument or Inference from the Father's continuing in Possession, and receiving the

the Profits, which sometimes the Son may not in good Manners contradict, especially where he is advanced but in Part; and if such Inference shall not be made by the Father's Perception of Profits, it shall never be made from any Words between them in common Discourse; for in those there may be great Variety, and sometimes apparent Contradictions.

Therefore where the Proof is not clear and manifest, this Court ought to follow the Law, and 'tis very safe so to do.

Now where there is no clear Proof of any *Trust* between the *Father and Son*, the Law will never imply a *Trust*, because the natural Consideration of Blood, and the Obligation which lies on the Father in Conscience to provide for his Son, are predominant, and must over-rule all manner of Implications.

And herein the Law of *Trusts* doth (as it ought to do) agree with the Law of *Uses* before the Statute of *H. 8.* and therefore if before that Statute, the Father had made a Feoffment to a Stranger without any Consideration, the Law raised an Use by Implication to himself; but if he made a Feoffment to *his Son*, no Use did arise to the Father by Implication; because the Blood, which is a sufficient Consideration, did fix and settle the Estate in the Son.

In the principal Case it did not appear, that there was any probable or reasonable Motive for the said *William Lord Grey* to create any such Trust; and therefore the Court ought not to suppose or imply a *Trust* between *Father and Son* against the Presumptions of Law, Nature or Conscience; and the rather because this Court in the Determination of *Trusts* hath always agreed with the Reasons of the Law in the Limitations of *Uses*; for as Land cannot ascend at Common Law, so ought not a *Trust* in Equity.

'Tis true where a Son is married in the Life-time of his Father, and by him fully advanced, and in a Manner *emancipated*, there a Purchase by the Father, and in the Name of his Son, may be a Trust for the Father, as much as if it had been in the Name of a Stranger; because in that Case all Presumptions or Obligations of Advancement cease.

But where the Son is not advanced, or but advanced or emancipated in Part, in such case there is no Room for any Construction of a Trust by Implication; and without clear Proofs to the contrary, it ought to be taken as an *Advancement of the Son*; and therefore in the whole Matter, and upon Consideration of the Nature of this Case, and of the Family at that Time when this Purchase was made, and that there were no Debts, but the *Ld. Wm. Grey* in great Splendor, and not under the Calamity of the rebellious Times, or any other Obligation to create a Trust for Protection or Shelter;

And since, upon Search of Precedents of this Court, the Opinion hath been uniform in Parallel Cases; the Court did declare, that the Purchase of the Manor of *Gosfeild* by the *Lord William Grey*, in the Name of his Son *Thomas Grey*, was and must be taken as an *Advancement*, and for the yearly Benefit of his said Son, and without any Manner of *Trust* for his Father; and that the *Trust* upon both the Settlements of *William Lord Grey* and *Ralph Lord Grey*, ought to be executed according to those Settlements; and it was decreed, that the same should be executed accordingly.

And that the said Manor of *Gosfeild*, and all other Lands and Tenements purchased therewith, in the Name of *Thomas Grey*, be and are hereby absolutely discharged from both the said Sums of 6000 *l.* charged by the Settlement of *Wm. Lord Grey*, to be raised for *Ralph* and *Charles Grey* the Infants, the same being in no sort liable thereunto.

But that the Rents and Profits of the other Lands in *Gosfeild* not purchased in the Name of *Thomas Grey*, and also the Rents and Profits of the Manor of *Epping*, receiv'd since the Death of *Wm. Lord Grey*, are hereby decreed to stand charged with the Payment of both the said Sums of 6000 *l.* until the same be fully satisfied in Manner following.

ff. The *Lady Katharine* shall account for what she hath received as Executrix to her Husband the said *Ralph Lord Grey*; and that she and the said *Ford Lord Grey* shall account for what they have respectively received, since the Death of *Wm. Ld. Grey*, out of the Manors and Lands subject to the *Trust* for raising both the said Sums of 6000 *l.* and that the same be paid and applied accordingly.

And that the Manor of *Gosfeild*, and the Lands therewith purchased in the Name of *Thomas Grey*, ought to bear and satisfy the several Legacies of 2000 *l.* a-piece devised to *Ralph* and *Charles Grey*, and of the 4000 *l.* and 2000 *l.* to Mrs. *Katharine Grey*, and decreed the same accordingly.

As to the Debts of *Ralph Ld. Grey*, though it was strongly urged by the Counsel of the *Lady Katharine*, that it was the Intention of her Husband the said *Ralph Lord Grey*, that she should enjoy all his personal Estate discharged of all Debts, as well as of the said Legacies; the Court declared, that the personal Estate shall be always applied to the Payment of both.

Where
Debts and
Legacies are
charged
on Lands,
the personal
Estate shall
come in
Ease of the
Lands, if not
particularly
exempted.

And that if at any Time the Debts and Legacies are charged on Lands, yet even in that Case the personal Estate ought to come in Aid to ease the Lands, unless there is an express Clause in the Will to exempt it; which not being in this Case, though it may be probable that the Husband might so intend, yet the Court did not think fit by any Construction or Implication to exempt the personal Estate from the Payment of the Debts, which nothing but express Words ought to exempt. There-

Therefore it was decreed, that the personal Estate of the said *Ralph Lord Grey* the Testator, shall in the first Place be applied to the Payment of his Debts, as far as it will go, and shall come in Ease of the said Manor of *Gosfeild*; and that the several Trustees execute their several Trusts according to the respective Settlements, &c.

William Hodges *and others, Plaintiffs.*

Sir Robert Worsley an Infant, by the Lady Mary his Mother and Guardian, and the said Lady Mary Worsley, Defendants.

S*IR Rob. Worsley* the Father being seised in Fee of the Lands Contract made with the Father, and in Part executed by Payment of Money; but the Father died before it was perfected; the Son was decreed to perform it. in the Bill, with Power to make Leases for twenty-one Years, or 3 Lives, and to grant Copies of Copyhold Estates for three or four Lives, or for any Number of Years to determine on three or four Lives, in Possession or Reversion, did contract with the Plaintiffs to grant them several Estates in the said Lands; and in Pursuance thereof, the Plaintiffs paid several Sums towards their *Fines*, but before they perfected the same, *Sir Robert Worsley* died; and now the Plaintiffs exhibit their Bill against the Widow, and against the Infant, Son and Heir of the said *Robert Worsley*, that the said contract may be made good; and that the Infant may confirm the same when of Age.

It was decreed accordingly.

Termino Paschæ.

30 Car. 2. Anno 1678.

Mary Heupert, *alias* Hoopert, *Widow, Plaintiff.*

John Benn, *Defendant.*

The Defen-
dant was re-
lieved a-
gainst an
old Claim of
Money after
Sixty Years.

SIR George Kennett the Plaintiff's Father, by Indenture dated 7 Jac. together with Joan the Mother of the said Sir George, and Thomas Kennett his Brother, in Consideration of the Marriage of George Kennet with Elizabeth Smith, (who was the Plaintiff's Mother,) did convey the Lands in the Bill to certain Feoffees in Trust, and to the Use of the said George for Life, then to Elizabeth for Life, Remainder to the Heirs Males of their Bodies; and for Default of such Issue to the right Heirs of George, who at the same Time acknowledged two Statutes, one of 2000 l. to the said Joan, and the other of 1600 l. to Christopher Stacy, who afterwards married the said Joan.

George Kennett on 20 Novemb. 9 Jac. by Deed enrolled, did bargain and sell the Lands in the Bill, &c. lying and being in the Parish of Stonely, to Sir Robert Heath and one Sheares, and their Heirs, in Trust for Simon Chambers, Gent. who in Pursuance of the said Trust, did afterwards enter into Articles, 11 Jac. with the said George Kennett, that in Consideration of such Conveyance by Bargain and Sale as aforesaid, he the said Simon would undertake to pay 4410 l. for the said George Kennett, Part whereof, (viz.) 810 l. he would pay to the said George Kennett himself; and the other Part, (viz.) * 2000 l. to the said Joan, and 1600 l. to the said Christopher Stacy.

* This was
secured by
the two Sta-
tutes.

But instead of paying the same, or any Part thereof, the Statutes were both extended, and the Cognisees entered, and by Perception of Profits and Sale of Timber, had received above 1000 l. and therefore the Plaintiff, who is the only Daughter and Heir of the said George Kennett, exhibited this Bill to be restored and settled in the Enjoyment of the said Lands so sold to Sir Rob. Heath, in Trust for Chambers as aforesaid, alledging that there

never was any valuable Consideration paid, or proved to be paid, for the Purchase thereof by the said *Chambers*.

To which the Defendant pleads and demurs.

And for Plea faith, as to what the Plaintiff demands as Heir of *George Kennett*, that the said Deed enrolled, dated 9 *Jac.* was made by him in Consideration of * 3600*l.* being therein mention- * This was secured by the two Statutes.
ed as the Purchase-Money, and other Conveyances, and several Fines with Proclamations were levied by the said *George and his Wife*, of all the purchased Lands which the Defendant avers were all the Lands the said *George* had in the Parish of *Stonely*.

That the last of these Fines was levied in the 18th Year of *King James*, Anno 1620, being nine Years after the Purchase, and seven Years after the Articles of Agreement upon which the Plaintiff now claims 810*l.* being the Remainder of 4410*l.* of the Purchase-Money.

And as to her Claim of that 810*l.* or any other Money, by Virtue of the said *Articles*, 11 *Jac.* or otherwise, the Defendant pleads an Account in the Year 1618, under the said *George Kennet's* Hand, whereby it appears, that the said *Chambers* had paid to and for the said *George Kennett* more than 4410*l.* which was more than the Value of his Lands in the said Parish, out of which Lands the Purchaser had nevertheless been kept about 57 Years by the said *Extents* on the said Statutes; and therefore the Defendant pleads, that it ought however to be presumed, that all the Purchase-Money was paid, otherwise the said *George and his Wife* would not have levied the said last Fine 7 Years after the *Articles*, nor would have forbore to demand or sue for the same for above 60 Years past; and that the said Plaintiff by her Bill, doth not entitle her self to this 810*l.* either as * *Executrix* or * The Plaintiff made no Title as Executor or Administrator, nor
Administratrix to *George* her Father, nor chargeth the Defendant so to be, as in Deed he is not either Heir, Executor or Administrator of the said *Chambers*.

sued the Defendant as Executor, &c.

The Court was of Opinion, that the Payment of the said Purchase-Money, and particularly of the said 810*l.* ought not now to be drawn into Question so long after the Conveyance and Fines levied; therefore the Plea and Demurrer were allowed, and the Bill dismissed.

Robert Gibbons *an Infant*, by Robert Gibbons *his Father*, and John Hurle *his next Friends*, Plaintiff.

John Moulton *and Mary his Wife*, Defendants.

Devise of a Power to a single Woman, to grant an Annuity; afterwards she married; this did not divest her of that Power, and lodge it in her Husband, &c.

See Co. Lit. 112. a.

O *Osmond Shore* being possessed of the Lands in the Bill for a Term of Years, determinable upon the Life of *Anne Betts*, devised to his Niece *Margaret Gibbons*, (Mother of the Plaintiff the Infant) an Annuity of 45 *l.* for *her Life*, to be issuing out of the said Lands, if *Anne Betts* should so long live; and that if the said *Margaret* should die living the said *Anne Betts*, then the said Testator gave the said *Margaret Power before her Death*, to grant an Annuity to any Person she should nominate, and to charge the same on the said Lands, out of which the 45 *l.* was issuing, the same to continue to such Person during the Life of the said *Anne Betts*; and soon after the said Testator died, leaving *Geo. Moulton* his Executor.

Margaret Gibbons the Plaintiff's Mother enjoyed this 45 *l.* several Years; and in *Jan. 1666*, she by a nuncupative Will devised 20 *l.* Annuity to the Plaintiff her Son, and soon after she died; and then *Rob. Gibbons* her Husband, and the Plaintiff's Father, took out Administration to the said *Margaret*; and afterwards the Executor of the said Testator *Osmond* paid some Part of the said Annuity to the said Administrator, but sometime after the said Executor died, leaving *Mary* his Widow Executrix.

The said *Mary* afterwards married *John Moulton*, but they refuse to pay this Annuity of 20 *l.* per Ann. to the Plaintiff, pretending he hath no Right to it; and that he being an *Infant*, cannot give a Discharge, if he had a Right; though he hath offered by his Guardian to indemnify them upon Payment of the Arrears.

And now they pretend, that they do not know that *Margaret* the Plaintiff's Mother made any Appointment of the said 20 *l.* per Ann. or if she did, that she had any Power so to do; because after she had such Power by the Will of her Uncle *Osmond*, she married the Plaintiff's Father, and thereby divested her self of that Power and Appointment; and that by her Death, that Interest which she had is now vested in her Husband, who survived, and who hath taken out Administration to her, to whom the Defendants do admit they have paid the same for sometime, but now deny Assets of her former Husband *Geo. Moulton* to pay the said Arrears.

But the Plaintiff by his Counsel insisted, that *Margaret*, by the Will of her *Uncle Osmond*, had a plain and clear *Power* of Nomination, and to appoint any Person to have the said 20*l.* per Annum, during the Life of *Anne Betts* who is still living.

Now this Power being solely vested in the said *Margaret*, operates no farther than for her to nominate the Person who shall take, and doth not in any sort charge the Lands by Virtue of any Interest arising from her; but that is done by the Will of *Osmond Shore the Testator*; and therefore the Plaintiff, who was nominated by her, hath a good Title to receive, and not the Administrator of *Margaret*, who had no Interest in the Lands; and by Consequence he could have none as *Administrator* to her.

The Court was of this Opinion, and therefore decreed the Payment of the 20*l.* per Ann. and the Arrears to the Infant, during the Life of *Anne Betts*; and the Master to ascertain the same with Damages, and the Administrator shall give the Defendants a Release, &c.

Philip Earl of Pembroke, John Tregonnel, Francis Winnington, *Esq*; Herbert Saladin, Stephen Liddiard, and William Sadler, *Plaintiffs*.

Charles Earl of Middlesex, Thomas Hawles, John Wildman, William Ashton and others, *Defendants*.

KING James being seised, in the Right of the *Dutchy of Lancaster* of the *Manor and Chase of Azborn in Wiltshire*; and of a *Free Warren of Conies extending over the Chase*, did by Indenture dated 10 Jan. 14 Jac. grant to Sir Francis Bacon, and Sir Thomas Trevor, amongst other Things, his Manors, Forests, Parks, Warrens, Farms, Lands, &c. of and in *Azborn* for 99 Years, in Trust for the then *Prince of Wales*.

The Assignment of a Term for Years, and the Grant of the Inheritance of the same, ought one to be as large as the other.

The Premises descended on the said *Prince*, then *King Charles the First*, who Anno 3. of his Reign granted the said *Manor and free Warren of Azborn*, extending over the *Chase*, to the *Mayor and Citizens of London*, to satisfy a Debt due to them, excepting the *Chase of Deer*, (being a distinct Franchise from the *free Warren*) which *free Warren* was before that Time leased out by the King, and his Progenitors at the yearly Rent of 44*l.* per Ann. and was at that Time in Lease to *Wm. Earl of Pembroke*; and the *Chase of Deer* in that very Lease reserved to the

King, and of which said *Chase of Deer* the said *Earl William* and his Heirs were *Rangers*.

And in further Satisfaction of the Debt due to the *City*, and in Pursuance of a Contract made by the said *King Charles I.* to satisfy the same, he 13 *May Anno 4.* of his Reign, by a Warrant under his Privy Seal, did direct the said *Sir Tho. Trevor*, who was the surviving Trustee, to convey the said Manor and *free Warren* to *Williams* and *Mitchell*, and other Trustees for the said *City* with such *Exception* as aforesaid.

Accordingly by Indenture 20 *June 4 Car.* the said *Sir Thomas Trevor* assigned to the said *Williams, &c.* the Manor of *Azborn*, (excepting the * *Chase*, and the Liberties thereunto belonging, and all *Warrens and Parks*;) for the Remainder of the said Term of 99 Years, in as full and ample Manner as the same were granted to him the said *Sir Tho. Trevor, &c.*

* This doth not except the free Warren.

The Inheritance of the free Warren granted.

And afterwards 9 *Sept.* following, the King himself * granted the Reversion and Inheritance of the Manor of *Azborn*, and *free Warren of Conies*, (excepting the *Chase to the Warren* belonging) to one *Ditchfeild* and other Trustees for the *City*.

So that tho' all *Warrens* were excepted in the Assignment of the Term to *Williams*; yet by this subsequent Grant of the King of the Reversion and Inheritance, the free Warren was granted, and the *Chase only excepted*; for which Reason it must be intended, that the Assignment of the Term ought to have been as large as the Grant of the Inheritance, and that both the Term and the Inheritance of the free Warren ought to be granted to the *City-Trustees*.

Anno 1631, 10 May, the *City-Trustees* by the Direction of the Mayor and Commonalty of the *City*, in Consideration of 3865*l.* paid to them by the Grandfather of the present *Earl of Pembroke*, assigned the said free Warren to *Sir Ben. Rudyard*, and *Sir Rob. Pye*, in Trust for the said *Earl the Grandfather*, for the Residue of the said Term of 99 Years; and the other Trustees of the Inheritance of the said free Warren in Trust for the *City*, did by the like Direction convey the Reversion and Inheritance thereof to the *Earl the Grandfather* and his Heirs, who have enjoyed the same ever since, till lately.

That the said free Warren hath been settled in Tail by some of the *Earl's Ancestors*, and the Entail barred by his Father, who devised it to *Tregonnell*, for the Payment of his Debts; and then to settle it in Tail to the Plaintiff the present *Earl*; and the Interest of the Residue of the Term for 99 Years, was assigned to *Saladin* to attend the Inheritance.

That the Defendant *Hawles* being a Servant to the *Earl's Father*, and perusing his Deeds, and intending to make some Advantage to himself, for that the free Warren was excepted in the Assignment of the Term of 99 Years, made by *Sir Tho. Trevor* to

Wil-

Williams and other the City-Trustees, he the said *Hawles* and the Defendant *Wildman*, articted with the Defendant the *Earl of Middlesex*, to pay him a considerable Sum of Money, if he would beg the said *free Warren* of the King, and procure a Grant thereof to himself.

Whereupon the said *E. of Middlesex*, 20 March Anno 24. Car. 2. procured a *Privy Seal*, directing *Sir Thomas Trevor*, Executor of *Sir Thomas* the surviving Trustee, to assign the said *free Warren* to one *Sherwin* and others, for the Residue of the said Term in Trust for the King, which was done accordingly; and afterwards the King and *Sherwin*, &c. assigned it to the *Earl of Middlesex*, who in *Easter-Term* following, Anno 24. Car. 2. brought an Ejectment in the Name of *Ashton* his Lessee, which was delivered by *Lydyard* and *Sadler* the Tenants in Possession of the *free Warren*.

The then *Earl of Pembroke* became Defendant, and soon after died; whereupon his Executors *Tregonnell* and others became Defendants; and upon the Trial, a special Verdict was found upon the *Exception of the free Warren in the Assignment made by Sir Thomas Trevor to Williams* and others; but neither the original Contract made between the King and the City, nor the Warrant under the Privy Seal directing that Contract, nor the Grant of the Inheritance, were then produced, by which it would have appeared, that only the *Chase of Deer* was intended to be excepted.

It was argued, that the *Exception of the Chase* in the Assignment made to *Williams*, ought not to except the *free Warren*, that being a *Franchise* of a lower Nature; and therefore the Residue of the said Term of and in the *free Warren* ought to have been assigned to *Williams* as not excepted; and the rather, because the Inheritance of the *free Warren* hath been conveyed by a subsequent Grant, and enjoyed under that Grant by the Ancestors of the present *Earl of Pembroke*, for near fifty Years; and the *Fee-Farm Rent* of 40*l.* per Ann. for the same, constantly paid to the Crown.

Therefore if contrary to the original Agreement between King Car. 1. and the City, it shall be included within the *Exception of the Chase* in the Assignment made to *Williams* and others the City-Trustees; the Defect of that Assignment ought to be supplied in *Equity*, especially since the Defendant had full Notice of such Assignment, and had obtained a Title from the King by Surprise and Misinformation.

This being the Case of the Plaintiff, and what was argued in his behalf, the Defendants confessed in their Answer, and it was insisted for them, that *Sir Thomas Trevor* the Executor of the surviving Trustee of King Car. 1. did assign all his Interest of the Term of Years in the said *free Warren*, to the aforesaid *Sherwin*

win, in Trust for *King Car. 2.* without any Reservation of Rent.

That the *King* and the said *Sherwin* afterwards assigned it to the *Earl of Middlesex*, who gave Orders for the Ejectment to try the Title, and what Interest he had in the said *free Warren*, which still rests in him.

Hawles confesseth, that he agreed with the present *Earl's Father*, in the Year 1654, for a Lease for three Lives in the said *free Warren*, for which he was to pay one thousand Pounds Fine, and the antient Rent of the Crown, (*viz.*) 44 *l.* every Year.

That in Pursuance of that Agreement, he enjoyed the said *free Warren* for some Years, and paid the Rent, and 150 *l.* Part of the said Fine of 1000 *l.* but before he had any Lease from the said *Earl*, he the said *Hawles* transferred the Benefit of his said Agreement and Contract to *John Norden*, for the clear Profit of 500 *l.* which he was to pay the said *Hawles*.

That the said *Norden* held the said *Free Warren*, and took a Lease thereof pursuant to the said Agreement, which Lease was granted to him by the said *Earl*, to whom he (the said *Norden*) paid the Residue of the said Fine of 1000 *l.*

That he the said *Hawles* sued the aforesaid *Norden* for the said 500 *l.* and having expended several Sums in Suits about the said *free Warren*, he at last obtained a *Decree* of this Court against *Norden* for 3000 *l.* but before the same was paid *Norden* died, and his Executor being in Treaty with *Hawles* to assign the Lease to him the said *Hawles*, towards Satisfaction of the said 3000 *l.* he was deceived by the Plaintiff *Saladin*, who had an Interest in the said *free Warren* by an Assignment from *Sir Robert Pye*, to attend the Inheritance; whereas the Lease to *Norden* ought to be made good in Equity.

But the Court declared there was an apparent Equity for the Plaintiff the present *Earl of Pembroke*; it appearing that the City had contracted with the King, and paid for the *free Warren*, and that the Reversion and Inheritance thereof was expressly granted to the City-Trustees; and that *Sir Thomas Trevor* and the King's Trustees had not done well in not assigning the Residue of the Term to the City-Trustees; for that such Assignment ought to have been as large as the Grant of the *Reversion and Inheritance* to the other *Trustees*.

However as that Term was to attend the Inheritance whilst it was in the late *King*; so it ought still to wait on the Inheritance, and be attracted by it in the Hands of the Purchaser under the King, and of the Defendant the *Earl of Middlesex*, deriving his Title to the Residue of the Term under the *King* and his *Trustees*.

Therefore it was decreed, that the *Earl of Middlesex*, and all claiming under him, shall assign the Remainder of the said Term of 99 Years, of and in the said *free Warren* to the Plaintiff the present *Earl of Pembroke*, or to such Person as he shall appoint, and that the said Term shall attend the Inheritance.

And that so much of the *Chase* over which the *Warren* stock'd with *Conies*, at the Time of Assignment of the Term to *Williams*, and to the great Uncle of the Plaintiff, and which was within the original Lease, and held and enjoyed by Virtue thereof, shall be taken to be the *free Warren* for which the City contracted, and which was granted by the King to their Trustees; and which the Defendant the *Earl of Middlesex* is hereby decreed to assign, to be held by the Plaintiff the present *Earl of Pembroke* against him, and all claiming under him.

The Master to settle the Assignment, if the Parties disagree, and the Bill exhibited by *Hawles* to be dismissed with *Costs*.

Martha Corfellis, Widow, Nicholas Corfellis an Infant, and Jacob Corfellis, Plaintiffs.

John Corfellis and others, Defendants.

THE Defendant by Insinuation with the Plaintiff's Father, who died on the 16th of Oct. Anno 26. Car. 2. contrived a Will by which the Defendant was made sole Executor; and but devised to the Plaintiff *Martha*, to bar her of any Claim to her Husband's personal Estate; and that in case she died without Issue, all his Lands should come to the Defendant and his Heirs; and that the Defendant should have the Guardianship of the Plaintiff *Nicholas* the Infant.

All which being set forth in a former Bill, *John* the Defendant pleaded the said pretended Will, and insisted upon it.

Afterwards the Plaintiffs discovering several new Matters by which it appeared that the said Testator intended to give all his Estate both real and personal to *Nicholas* his Son the said Infant; but that by the Contrivance of the Defendant, or Negligence of the Writer, the personal Estate was not so much as mentioned in the Will.

And that the Testator having borrowed 2000*l.* of *Sir William Peake*, immediately lent 500*l.* Part of that Money to the Defendant, but mortgaged his own Lands in *Essex* to secure the Repayment of the said 2000*l.* to the Mortgagee; and afterwards the Defendant mortgaged his Lands in *Bentley* to the Testator, to secure

cure the Repayment of 500*l.* but now pretends that no Part of the personal Estate ought to be applied for the Payment of the Testator's Debts; because the Payment is charged on the real Estate, which ought therefore to bear the Burthen; and that the personal Estate is devolved on him as Executor, who as pretended Guardian of the Infant hath entered on the *real Estate*, being about 100*l.* *per Ann.* and hath received the Profits, &c.

Therefore the Plaintiffs have exhibited their Bill to discover the *personal Estate*, and the Profits received of the real Estate, and that the same may be secured for the Benefit of the Infant and his Mother the Plaintiffs, after the Mortgage is discharged.

The Defendant insists, that the Validity of the Will hath been tried at Law, and a Verdict found for the Will; and that by Virtue thereof, he is entitled to the *personal Estate as Executor* to *Nicholas*, free from any Trust either expressed or implied, and that the Testator, before he made his Will, declared, that the Defendant should have his *personal Estate*, and that the 2000*l.* should be paid out of his Lands mortgaged to *Sir Wm. Peak*.

He denies that any Part of the 2000*l.* was lent to him as suggested by the Bill, but that the Testator at his Death was indebted to him in 460*l.* and that about *June* 1664, the Defendant had Occasion to go beyond Sea; and there being a great Kindness between the Testator and this Defendant who was his Brother's Son, and had been his Agent in great Part of his Business; the Testator promised, that if the Defendant survived, he should be the better for his Estate; and to balance that Promise, the Defendant made the said Deed for 500*l.* as an Act of reciprocal Kindness and Gratitude without one Penny received; for it was to stand in Force against the Defendant and his Heirs, in case he should die before he return'd to *England*, and the Testator should survive him; but if he returned, then the said Deed was to be void; and lastly he annexed to his Answer an Account of the personal Estate, and the Profits and Disbursements of the real Estate, and denies the Value of the Lands as charged.

The Plaintiffs by their *Counsel* insist, that the Defendant had confessed he had burnt the original *Deed of Mortgage* which he made to the Testator for securing the Payment of 500*l.* and by an Order 18 *June* last, he was ordered to deliver to the Plaintiff's Clerk in Court, the Copy of the said Deed, on Oath, with the Names of the Witnesses, and that it is a true Copy, and that he should bring 100*l.* into Court, which had been received by him as he is Tenant of some Part of the Testator's Lands; but this was not done; and the Account annexed to his Answer is confused, without casting up any Sum, or balancing any Account; therefore they insisted that he might be examined upon *Interrogatories* to perfect his Answer, for the better discovering of the personal Estate, and that the same may be applied to discharge the said 2000*l.* and that

that the 500 *l.* for which the Defendant mortgaged his Estate, may be taken as Part of the Testator's personal Estate, &c. and that the Infant may be continued at *Eaton* where he is now at School.

The Court declar'd, that the Debt of 2000 *l.* secured by a Mortgage, ought to be taken as a Debt upon a *Specialty*, and that the *personal Estate* of the Testator ought in the first Place to be applied towards satisfying the same with the Interest, and afterwards of any other the Testator's Debts, and that the 500 *l.* secured by the Defendant's Mortgage, shall be taken and accounted for by him as Part of the said *personal Estate*, and that the Lands mortgaged shall stand charged with the Payment thereof; and decreed the same accordingly, and to account before a Master, &c.

And that if the Defendant hath paid or compounded any of the Testator's Debts not due on *Specialties*, the same is a Male Administration, and shall not be allowed in the Account until after the said 2000 *l.* is discharged out of the personal Estate.

The Defendant shall be examined upon *Interrogatories* to perfect his Answer, and shall not from this Day acknowledge any Judgment for a Debt to any of the Creditors of the Testator; but such Judgments which are already had, shall be paid, and those Judgment-Creditors who are not satisfied shall have Notice given them by the Defendant, to make their Debts appear before the Master to be real and just Debts before they shall be paid.

That the Defendant shall not have the Custody of the Infant, but that he shall remain at *Eaton* till this Court give farther Direction, &c.

Sir William Jones the Attorney General, Bodwin, Cooper and others, Churchwardens of the Parish Church of Lambeth in Surrey, on the behalf of the Poor of the said Parish, Plaintiffs.

Sir Jeremy Whitchcott and Paul Whitchcott, Esq; Defendants.

NOEL late Lord Caroon, and formerly Ambassador here from the *States General*, being seised in Fee of that great House in *Lambeth* called *Caroon-House*, and of the Lands thereunto belonging called the *Park*; and having built an *Alms-house* in that Parish, wherein he placed seven poor Women of *Lambeth* of sixty Years of Age and upwards, whilst he lived, and appointed

A Charity was by Decree of the Court established in Succession, tho' not given so in direct Words.

4*l.* to be yearly paid to them by quarterly Payments, and to establish the same as a *perpetual Charity*, did by his last Will in *June 1623*, which he made in *Latin*, charge the Premises with the Payment of 28*l.* every Year, to be distributed equally to *seven poor Women*; and directed, that when one or more of them died, their Places should be supplied by the Appointment of the Owners of *Caroon-House*, by *other poor Women*, which (as it was suggested) he intended should be *poor Women of that Parish*, which was always done by himself as long as he lived; and that the Defendants who were now the *Owners of Caroon-House, &c.* had for some Time paid the *Charity*, but of late had refused, so that it became in Arrear, neither did they fill up the vacant Places, pretending that the said Charity was not payable in *Succession*, there being no such Direction in the Will of the *Donor*, but only to 7 Poor Women who were in Possession at his Death; or that if it must be paid, yet it might be to other poor Women out of any other Parish at their Appointment.

And therefore this Bill was brought to have the said Charity established for ever, and the Arrears thereof to be paid by the Defendants, and the growing Payment duely made for the Time to come, and the Poor Women to be chosen *in Succession out of Lambeth* only, and not out of any other Parish; for otherwise the Charity would rather be a Prejudice than a Kindness to *Lambeth*, because if taken out of other Parishes *Lambeth* must maintain them, the 4*l. per Ann.* being not sufficient to maintain a poor Woman of 60 Years old.

It was decreed as prayed in this Bill.

Craker

Charles Oaker and Eleanor his Wife, one of the Daughters of Richard Spyer, Plaintiff.

John Parrott and Judith his Wife, formerly the Widow and Executrix of the said Richard Spyer, Defendant.

J. C. in L. Nott. m. App. Rep. 1. C. 2. Ch. C. 220.

A Freeman of London devised his Part thus, *ff.* I entrust it with my Wife, and to give it a-
amongst my

THE Testator Richard Spyer being a Citizen and Freeman of London, and having Issue the Plaintiff Eleanor by one Venter, and 3 Daughters by the Defendant Judith, and being seised and possessed of a great real and personal Estate, made his Will dated 19th Novem. 1674, in these Words after some Legacies given.

Children, as she shall think fit; the Testator had a Child by a former Venter, to whom the Mother in Law gave a small Part, and the rest amongst her own Children; the Court decreed that the Distribution was unjust.

ff. *As for the rest of my Estate, one third Part of it is due to my Children Equally; and therefore my Will is, that the Portions I gave in Advancement with my married Children, shall be accounted into their Shares to make their Parts equal with the Portions of my unmarried Children; one other 3d Part belongs to Judith my Wife, and the other 3d Part thereof which I have Power to dispose (the Legacies which I have given being first deducted) I do intrust with my Wife whilst she continues my Widow; and if she remarry I will and desire her to give unto my Children the Remainder of my said 3d Part of my Estate as she shall think fit.*

The Testator made the said *Judith* his Executrix, and soon after died, then she proved the Will, and possessed her self of the said Estate, and since intermarried with the Defendant *John Parrot*; and afterwards she by Deed *Poll* gave to the Plaintiff *Eleanor* her Husband's Daughter by a former Wife 56*l.* and to her own 3 Children which she had by him, (*viz.*) to *Mary* 107*4l.* and to *Elizabeth* and *Sarah* 257*l.* a-piece.

And now the Plaintiffs exhibit their Bill, that *Eleanor* might have an equal Distribution with the other three Children.

This Case coming by Way of *Appeal* from a Decree made by *Sir Thomas Jones* against the Plaintiffs, and their Counsel now insisting for them, that it appeared in Proof, that the Testator declared he had made his eldest Daughter equal with the rest of his Children; and that he told *Judith* that the said 3d Part was a Trust which he left with her, and that she declared on her Death-Bed, that she had taken the said *Eleanor* as her own Child, and often before that Time promised she would make her equal with her own Daughters; but since had said she should have nothing but what she could get by Law.

The Court was satisfied, that it was the Intention of the Testator, that all his Children should have an *equal Share* of the *Legatory Part of his Estate*; and that since *Judith* had promised to make them *all equal*, and there being no Act of Disobedience or any Disobligation proved, the *Lord Chancellor* decreed, that the Distribution which *Judith* had made was unequal and unjust; and therefore directed an Account to be taken both of the *Legatory* and *Orphanage Parts* of the Testator's Estate.

And that there shall be an *equal Distribution* made thereof amongst the said Children, &c.

Edward Hill and John Penford, *Plaintiffs.*

Joshua Baker, *Defendant.*

THE Plaintiff *John Penford* lived in *Leicester*, but coming to *London*, the Defendant who lived in the *City*, desired him (the Plaintiff) to let him have 50*l.* and that he would draw a Bill on his Brother *Nath. Baker*, who likewise lived at *Leicester* to repay it to the Plaintiff *Penford* as soon as he returned home to *Leicester*.

Accordingly the Plaintiff *Penford* looking on the Defendant and his Brother to be honest Men, gave the Defendant two Bills drawn on the other Plaintiff *Edward Hill*, the one for 20*l.* and the other 30*l.* payable at twenty Days Sight which *Hill* accepted.

The Plaintiff afterwards returned to *Leicester*, and demanded the 50*l.* of *Nathaniel Baker* the Defendant's Brother, who told the Plaintiff he would not pay it, having no Effects of his Brother in his Hands; thereupon he (the Plaintiff) wrote to *Hill* to stop the Payment of the Money, but before *Hill* received the Letter, he paid the Bill of 20*l.* and afterwards refusing to pay the other of 30*l.* the Defendant threatened to sue him.

And now the Plaintiffs have exhibited their Bill, praying an Injunction and Relief.

The Court decreed the Defendant to pay back the 20*l.* and that the Plaintiff *Edward Hill* shall be discharged from the Payment of 50*l.* and a perpetual Injunction.

Thomas Goodwin *an Infant*, by Sir John Duke his
Guardian, Plaintiff.

Richard Cutler and others, *Defendants.*

A Trust was decreed of a Term for Years tho' not expressed in the Deed. **E**Say *Risby* and *Elizabeth* his Wife, had Issue one Daughter named *Elizabeth*, who first married *John Goodwin*, by whom she had Issue *Thomas Goodwin* an Infant, the now Plaintiff; and after the Death of her said Husband *John Goodwin*, she intermarried with *Richard Cutler* the Defendant.

The

The said *Esay Risby* being seised of some *Lands in Fee*, and possessed of other *Lands* for a *long Term of Years*, by Virtue of a Lease thereof granted to him, assigned the said Term to one *Benson*, as it was suggested, in Trust to attend the Inheritance, but that did not appear; afterwards he settled the Inheritance, and the said Leases, so as after his Death the same was to come to the Plaintiff the Infant, who was his Grandson, and to the Heirs of his Body Remainder over, and according to that Settlement it was so decreed in a former Cause by this Court.

And there being a considerable Sum of Money due to the said *Esay* from one *Howland* another Defendant, he the said *Esay* by his last Will dated in the Year 1666, devised his personal Estate to the said *Elizabeth* his Wife whom he made sole Executrix, and soon after died.

Elizabeth Risby the Widow and Executrix, as aforesaid, proved the Will, and so she became entitled to the Money in *Howland's Hands*; and she by her Will dated 27 May 1669, devised all her personal Estate to the Infant the Plaintiff, and that the same and all her Money should be laid out in a Purchase of Lands of Inheritance, to be settled on the Plaintiff the Infant and the Heirs of his Body, with several Remainders over, in such Manner as her Lands in *Kent* were settled, and made *John Howland* and *William Whitefeild* Executors, and then she died.

Her Executors proved the Will, and they together with the Defendant *Cutler* who married the Widow *Elizabeth Goodwin*, the Mother of the Infant, possessed themselves of the Money due to the Estate, to the Value of 2000 *l.* which they ought to have laid out in a Purchase, pursuant to the Will of *Elizabeth Risby* his Grandmother; and therefore the Plaintiffs have exhibited a Bill against *Cutler*, praying that he may shew by what Title he receives the Rents, and to account for the same to the Plaintiff; and that he may discover the Writings, and that the Estate may be decreed to him.

Cutler the Defendant insists on the said Term of Years assigned by *Esay* to *Benson*, who assigned it to *Elizabeth* the Daughter of *Esay*, with whom he married; and she gave it to her Husband the Defendant *Cutler*, and that he had no other Portion with her.

But the Court finding by one or more Deeds, that *Elizabeth Goodwin* now *Cutler* had declared, that the Assignment of this Lease was a Trust reposed in her; and that it was her Father's Estate, and that she gave a Bond of 4000 *l.* to perform the Trust, and that after she married *Goodwin*, he gave a Statute of 5000 *l.* defeasanced for the Performance thereof; so that *Esay* looked upon it as his own Estate, and that he had Power to dispose thereof; for that he was never divested of the Trust in the said Leases which were originally to attend the Inheritance; and having reserved a

Power of *Revocation* therein as he pleased, and the Defeasance of the *Statute* being suppressed or concealed by the Defendant; for these Reasons the Plaintiff ought to have the Benefit of the said *Trust*, and the same was decreed accordingly.

Samuel Foot, *Esq*; and others the Creditors of Gustavus Venner, *Gent. deceased*, Plaintiff.

Edward Clerke, *Esq*; the elder and younger, and Ursula Venner, *Widow and Administratrix* of Gustavus Venner, with the *Will annexed*; and Gustavus Venner an *Infant*, Son of the said Gustavus and Ursula, by his said Mother and Guardian, Defendants.

Creditors not Parties to this Suit were allowed 6 Months to come in and prove their Debts, and to pay their Proportion to the Charges of this Suit.

THIS Bill was, to discover and to have an Account of the personal Estate of *Gustavus Venner* deceased, and to have a Trust settled by him on the Defendant *Edward Clerke* and his Son, for raising Money to pay his Debts executed; and to set aside a Settlement made by him on his Marriage with *Ursula* the said *Edward Clerke's* Daughter, suggesting that it was *voluntary and fraudulent*; and to have the Lands and personal Estate sold and applied to pay his Debts which were due to the Plaintiff's Creditors mentioned in a Schedule annexed to the Bill.

As to the Setting aside the *Marriage-Settlement*, it was suggested, that the Lands settled were purchased with the Creditors Money, and that previous to the said Marriage there was never any Agreement for such Settlement to be made, nor any Portion paid or promised, but that the Marriage was had *Clandestinely* without the Knowledge of her Father, and that the Settlement (if any) was *voluntary and fraudulent* against his Creditors, and not made till a little Time before his Death, tho' he had been married above two Years.

That there were several long Leases for Years, yet in Being prior to the said *Settlement*, which in Equity ought to be set aside, and severed from the Inheritance, and made Assets, and liable to discharge the Debts of the said *Venner*.

And that by his Will he devised to the said *Edward Clerke* and his Son a Moiety of the Rectory (in the Bill mention'd) for 21 Years, in Trust to raise Money to pay his Debts, which the Defendants ought to execute.

The Defendant *Edward Clerke* and his Son confess the Trust, but deny that they have acted in it; and that the elder of them being 60 Years old, had renounced both the Executorship and Trust.

But it appear'd, that there was a very fair Treaty about the Marriage, and the Portion paid, which was 1000*l.* and the Settlement made.

Marriage-
Settlement
to be im-
peached.

Ursula confesses, that she possessed her self of the personal Estate and Receipt of the Profits of the Trust-Estate, and is ready to account for the same, and confesseth the Terms for Years prior to the Settlement, and which was made in Trust to attend the Inheritance; and that she hath paid several Debts, and annexed the same to her Answer.

The Court finding the Marriage Settlement and Portion fairly done and perform'd, would not impeach the same; but decreed *Ursula* to account, &c. and that Sale be made of the Leases in which the said *Gustavus* was interested at his Death; and that all Bonds and other Securities due to him be brought into the Account, and answered when received.

That the Trust-Estate for twenty-one Years be sold, and that 10*l.* per Annum out of the Monies arising by such Sale, shall go to the Maintenance of young *Gustavus* the Infant, and the rest shall be paid to the Plaintiffs the Creditors in Proportion to their Debts; and that all the Creditors not Parties to this Suit, shall have six Months Time to come in and prove their Debts before the Master, paying their Proportion of the Charge of this Suit to be ascertained by the Master before they are let in to prove their Debts; and if they shall not come in Time as aforesaid, they are to be excluded.

Term. Sanct. Trin.

30 Car. 2. Anno 1678.

Ralph Keeling, *on the behalf of Elizabeth Child an Infant, and the said Elizabeth Child, by the said Ralph her Guardian, Plaintiffs.*

James Child, *Father of the said Elizabeth Child, Defendant.*

The Defendant was decreed to give Security for the Performance of a Trust.

THE Plaintiff *Elizabeth Child* the Infant, had a very considerable Legacy left her by the Will of her Grandfather *Wynne*, which he directed the Plaintiff *Keeling*, (who was his Executor) to pay into the Hands of the said *James Child* the Infant's Father, to be laid out and secured for her Use; and also had devised some Lands in *Kent* to the Defendant *James Child* and his Heirs, in Trust to sell the same, and that one Moiety of the Money arising by such Sale, together with the Profits in the mean Time, should be to the Use of the said Infant, and paid to her when she should be of the *Age of twenty-one Years*; and in the mean Time to be improved for her by her said Father, who accordingly received the Specifick and Money Legacies aforesaid, and the Lands were now ready to be sold by him.

But the Counsel for the Plaintiffs suggested, and it appeared to the Court, that there were reasonable Grounds to suspect that the Defendant would not fairly perform this Trust, there being several Instances of Unkindness towards the Plaintiff the *Infant*, since he had married a *second Wife* and had Children by her; one was, that he had altered his Marriage-Settlement made on the Infant's Mother, by which some Part of his Estate would have come to the said Infant, which he in his Answer excused by saying he made that Settlement voluntarily without any previous Agreement or Consideration, tho' 500 l. is the Portion therein mentioned; and farther said, that he had not given any just Ground to suspect his faithful Performance of the said Trust.

But upon the whole Matter the Court decreed, that he shall give Security before a Master, to perform the Trust, (reciting the Particulars thereof) if he intend to continue in the same; and that in such Case, if the Master shall find that he hath a clear Estate of his own, free from Incumbrances, and sufficient to answer the Portion and Matters aforesaid, then he is to take the Defendant's own *Recognisance* to perform the *Trust fairly*, but if he shall refuse to give such Security, then he shall pay and deliver over the said Legacies (naming them) to the Plaintiff, or to such Person who shall give Security for the same, to be allowed by the Master, who is to see the Money put out for the Benefit of the Infant; and that the Plaintiff and the Defendant shall be summoned upon the putting out the Money, or upon the altering the Securities from Time to Time, as the same shall happen, that they may make their Objections as there shall be Occasion.

Richard How, *Esq;* and Grace his Wife, Elizabeth Lindsell an Infant by the said Richard How her Guardian, Plaintiffs.

Richard Godfrey and John White, Defendants.

Edward Lindsell being seised in Fee of the Lands, (in the Bill) Value 200 *l. per Annum*, died about fourteen Years since, leaving the Plaintiffs Grace and Elizabeth Infants, but made a nuncupative Will, by which he desired the Defendants Godfrey and White to take Care of his Estate, and to preserve the same for the Benefit of his Children.

Trustees shall have their Costs and Charges, but no Allowance for their Care in managing the Trust.

The said Godfrey and White took out Administration with the Will annexed, by Virtue whereof, and as Guardians to the Infants they entered and possessed the personal Estate of the said Edward, and received the Rents and Profits of his Lands.

Richard How the Plaintiff about two Years since, married the Plaintiff Grace, and thereby became intitled to a Moiety of the real and personal Estate of the said Edward, and demanded an Account thereof of the Defendants.

The Plaintiff Elizabeth likewise is intitled to the other Moiety, and ought to have an Account thereof, she being of the Age of 15 Years, and by an Instrument under her Hand and Seal hath chosen the Plaintiff Richard How to be her Guardian.

The Defendants about *September* last, paid the Plaintiff *How* 500 *l.* and assigned to him a Mortgage of 80 *l. per Annum* for securing the Payment thereof, and a Bond of 1000 *l.* Penalty for Performance of Covenants, and both of them have annexed to their Answers an Account of what they have received and paid, and are willing to account being indemnified, and demand 20 *l. for their Care and Pains in managing the Trust*, and being allowed their Costs and Charges for their Trouble, are willing to resign the Trust; and pray the Consideration of the Court, for that the Plaintiff *How* had made no Settlement on the said *Grace* his Wife.

But the Counsel for the Plaintiff *How* insisting, that he had made a Settlement of 60 *l. per Annum* on her, which is as much as her Portion in Money required, and that the Inheritance of her Lands will descend to her Issue, &c.

The Husband was decreed to make a Settlement on his Wife.

The Court decreed the Defendants to account; and that if the Plaintiff *How* had not made a Settlement on his Wife suitable to her Portion, that then he do the same as the Master shall direct.

That the Defendants shall have their Costs and Charges, and all just Allowances, but not any Thing for their Care and Pains in managing the Trust.

That the Master shall ascertain how much *Elizabeth* shall share of the real and personal Estate, deducting for her Maintenance and Education; and that *How* give such Security as the Master shall allow to be responsible for so much of the Rents of the real Estate, and the whole of the personal Estate which doth belong to her; or that he, or any other by his Direction, shall receive during her Minority, and until she is in a Capacity to receive the same her self; and in the mean Time to put it out at Interest for her Benefit, as it shall arise, and to be paid to her at her full Age or Marriage, &c.

Barbara Harvey, *Widow, Plaintiff.*

Francis Harvey, *Gent. Defendant.*

Henry Harvey, late Husband of the Plaintiff *Barbara*, did, by his Deed dated in *February Anno 17 Car. 1.* grant to Sir *Robert Henley* and *Richard Warren* the Manor and Lands in the Bill mentioned, charged with an Annuity payable to the Plaintiff for 99 Years, if she so long lived, by equal Portions at *Michaelmas* and *Lady-day* for her Jointure, with a Power to distrain in Default of Payment; and if no sufficient Distress could be had, then to enter and receive the Profits till the said Annuity and Arrears were fully satisfied, &c.

Executor of
a surviving
Trustee de-
creed to per-
form a Trust.

In *November 1668*, the said *Henry Harvey* devised the Premises to *Henry* his eldest Son and his Heirs, and soon after died, and then *Henry* the Devisee entered and received the Profits for several Years.

In *April 1671*, *Henry* the Younger and the last Devisee made his Will, and devised the Premises to *John Harvey* his Uncle in Tail, Remainder to *Francis Harvey* (the Defendant) in Tail, Remainder over, and soon after he died.

John the Uncle died without Issue, then *Francis Harvey* the Defendant entered and enjoyed the Premises, subject to the said Annuity, and which had been in Arrear ever since the Death of *Henry Harvey* the Elder.

That the Trustees are both dead, and that Sir *Andrew Henley* is the Executor of the Survivor of them; and now the Plaintiff exhibited her Bill for the Arrears of the said Annuity, and that Sir *Andrew Henley* might execute the Trust.

Henry Harvey by his Answer and cross Bill insisted, that the Plaintiff *Barbara* had accepted some Lands in his Bill mentioned, in Lieu of the said Annuity, and so had thereby discharged the said Manor and Lands which before were charged with the Payment thereof; and that *Henry* her Husband kept the said Deed of Annuity on Foot only to prevent a Sequestration in the Time of the Rebellion; and that since that Time it was cancelled and made void.

But there being no Proof that *Barbara* had accepted any Lands in Discharge of the said Annuity, but that the Manor and Lands were once charged with the Payment thereof, the Court decreed the Executor of the surviving Trustee to execute the said Trust, and that the Defendant shall pay the said Annuity during the Plaintiff's Life, and all Arrears now due, and the Lands, &c. shall be charged therewith; and directed an Account.

A a a 2

Afterwards

Afterwards he did account, and the Master made his Report, and the Defendant accepted to the Sum therein reported, which Exception was allowed, and it was ascertained to another Sum then reported, and so decreed.

But the Defendant being prosecuted upon the first Decree, got an Order, that the Plaintiff and her Trustee should execute a Letter of Attorney to the Defendant, to give him Power to sue the other Tenants, to be contributory to the said Arrears, suggesting, that he had only Part of the Lands charged with the said *Annuity*.

The Plaintiff thereupon obtains an Order to discharge that last Order, and an Injunction for the Possession, and to hold the Premises till all the Arrears were satisfied, *nisi Causa, &c.*

Afterwards the Defendant shewed Cause, and proposed to pay the Annuity and Arrears since his Brother (*John* the Uncle) entered; and to continue Payment of the Annuity during the Life of the Plaintiff; thereupon the Possession was continued, and the Master was to make his Report what was due, who amongst other Things reported specially, that 250*l.* was due for *Fines on Leases*, and 30*l.* for *Stone digged out of a Quarry*, but whether that should be applied to the Arrears of the *Annuity* he submitted to the Court.

Upon the Plaintiff's Exception to this Report, she insisted by her Counsel, that it appeared by the Defendant's Answer, that the yearly Rent of the Premises charged with this Annuity was 140*l.* and that the *Rent and Fines*, and the Money arising by Sale of the *Stones*, ought to be charged with the Arrears.

The Defendant by his Counsel objected, that the Rents of the Premises in his Possession were not above 46*l. per Annum*, so that the other Tenants of the Premises ought to be contributory to the Arrears due to the Plaintiff, which could not be obtained unless he had Power to demand and sue those Tenants; and insisted upon a Letter of Attorney for that Purpose; and that then he would pay the said Arrears, but that the *Fines* and Money raised by the *Sale of Stones* ought not to be charged therewith; for if the Plaintiff her self had been in Possession, she could not have raised any Money by those means; and that the Defendant was willing to put the Plaintiff in as good a Condition as if she her self had been actually in Possession; and to account for as much as she her self could have made or received.

But the Counsel for the Plaintiff argued, that the Defendant had trifled with the Court, and obstructed the Plaintiff from receiving the Arrears of the *Annuity*, and had put her to great Charges on Purpose to make her comply; that there was not the least Colour for her to make a *Letter of Attorney* to the Defendant, to sue the Tenants who were Purchasers of their respective Estates for valuable Considerations paid to her late Husband; and that

Tenants not to be contributory to the Payment of the Arrears of an Annuity.

that the Defendant who came in voluntarily as Devisee to young *Harvey*, who was Devisee of her Husband, ought to take the Premises charged with the said Annuity and Arrears, especially since they are worth above 4000 *l.* to be sold.

That the Defendant, contrary to his own Offer by which he obtained an Order to be continued in the Possession, had not paid the 50 *l.* due at *Lady-day* last, and yet would now detain all the Money raised by *Fines* and by the *Sale of Stones*, tho' *Fines* in that Country are the principal Revenues of the *Manor*.

The Court on reading the Grant of the *Annuity*, and the former Decree, declared there was no Colour for a Letter of Attorney, to enable the Defendants to sue the Tenants to make them contributory, and therefore that the Plaintiff ought to have the Benefit of the *Deed and Decree*.

And that all the Proceedings subsequent to that Decree shall be set aside, and the Complainant shall hold the Manor and Premises in the Possession of the Defendant charged with the said Annuity against the Defendant and all claiming under him, till she be paid and satisfied the said Annuity of 50 *l.* per Annum and all the Arrears with Damages and Costs, and that an Injunction do forthwith issue to put the Plaintiff in Possession of the said Manor and Premises.

And that if she should die before the said Annuity and Arrears are satisfied, together with the Costs, that then her Executors or Administrators shall hold and enjoy the same Manor and Lands until the same are fully satisfied.

Edmund Brudnell and Thomas Orme, Esq;
Plaintiffs.

Edward Price, Defendant.
J. C. 1st Nov. 1677. Rep.

T *Thomas Brudnell* the Father charged his Lands which were Bond given now come to the Hands of *Edmund* his Son (the Plaintiff) with the Payment of 500 *l.* to his Daughter *Mary* at her Age of 24 Years, which *Mary* afterwards intermarried with the Defendant *Edward Price*, who received 100 *l.* Part of his said Wife's Portion.

then to such Person as the Survivor of them the said Husband and Wife should appoint. The Husband and Wife prayed, that he might have 200 *l.* to buy him an Office; which was decreed.

Afterwards it was proposed, that if the said *Edward* and his Wife would join in a *Fine* to discharge the Plaintiff's Estate of the said Money, that then he (the Plaintiff) would give his Bond
in

in the Penalty of 800 *l.* to pay the remaining 400 *l.* to the Defendant in Manner following:

ff. To pay the Interest thereof to the Defendant for his Life, and afterwards to his Wife *Mary* for her Life, and after the Death of the Survivor, then to be disposed to the Child or Children of the said *Edward* by his Wife *Mary*, as he by any Writing under his Hand and Seal in his Life-time should appoint, and in Default of such Appointment, then to their Child or Children; and if they died living their *Father and Mother*, then the 400 *l.* to be paid to such Person or Persons as the Survivor of them should appoint by any Deed or Writing under Hand and Seal; and for Default of such Deed or Writing, then to be paid to the Executors or Administrators of the Survivor of them the said *Edward* or *Mary*.

And by a Deed 17 *July* Anno 27 *Car. 2.* it was agreed, that the said 400 *l.* should remain in the Hands of the Plaintiff *Edmund Brudnell*, to be paid in Manner as aforesaid; but since the Defendant hath put the said *Bond* in Suit, he (the Plaintiff) submits to bring the said 400 *l.* into Court, and that the Proceedings at Law may be stayed, and the Bond to pay the same, and to perform the Trust, may be discharged.

To which the Defendant consented, but prayed the Court, that in Regard he was very poor, the said Plaintiff, in Conjunction with *Mary* the Defendant's Wife, (who for that Purpose was examined apart) might lay out 200 *l.* Part of the 400 *l.* to purchase an Office or some Employment for the Defendant, equivalent to that Sum, as soon as one could be found.

Which was decreed accordingly, and that the Plaintiff pay all the Arrears of Interest, and be indemnified in so doing; and the other Part to remain in the Hands of the Plaintiff, (*viz.*) 200 *l.* for and upon the aforesaid Trust.

William Bacon Clerk, Plaintiff.

Martha Ashby and Mary, Executors of Nathaniel Ashby, and Abraham Castle and others, Administrators of one Rivet, and Margaret Rivet and Thomas Wheeler, Defendants.

Lands charged with a Judgment were sold to a Purchaser, who had Notice of the Judgment; **T**HE Defendants *Martha* and *Mary* were the Daughters of *Nathaniel Ashby*, whom he made Executrixes in Trust to sell his Lands for the Payment of his Debts, which Lands they sold to *Abraham Castle* and one *Cooper* another Defendant for 1200 *l.* they having Notice at that Time that the Plaintiff had a Judgment; who afterwards bought in Mortgages to protect his Purchase: Decreed, that the Judgment-Creditor paying those Mortgages which are precedent to his Judgment, shall be admitted to redeem.

against the said *Nathaniel Ashby*, and therefore kept back Part of the Purchase-Money in their Hands; and since they have made the said Purchase, they have bought in several *Mortgages for Years*, and some of them subsequent to the Plaintiff's Judgment, to protect their Purchase.

And now the Plaintiff exhibited his Bill, to have the Benefit of his said Judgment and Extent, which he had obtained against the said *Nath. Ashby*, for a Debt of 230 *l.* and 30 *s.* *Damages*.

The Defendants own by their Answer, that they had Notice of *this Judgment*, but that they accounted it a *remote Security*, and that there was 282 *l.* Residue of the Purchase-Money in *Cooper's* Hands, for which he gave Security to the said Executrices, but avers, that the Plaintiff agreed to accept his Proportion with the Rest of the Creditors.

But no such Agreement being proved, and it plainly appearing that *Cooper* had Notice of the Judgment at the Time of the Purchase made, the Court declared, that the Plaintiff paying off those Mortgages which were precedent to his Judgment ought to be admitted to a Redemption, and to have the said Mortgages assigned to him, to satisfy his Debt and Charges; especially since *Cooper* had sufficient in his Hands to discharge the same.

Therefore it was decreed, that out of the 282 *l.* and Interest remaining in *Cooper's* Hands, he, before the 10th of August next, do pay the Plaintiff the said principal Sum and Interest, and Costs at Law, due upon the said Judgment and Extent, amounting in all to 318 *l.* and on Payment thereof the Plaintiff shall assign his Judgment and Extent to the Defendant *Cooper*, or to whom he shall appoint, &c.

Mary Blew, Widow, by Bill of Revivor, Plaintiff.

Thomas Baker, Defendant.

Thomas Baker the Defendant married the Executrix of one *Wm. Baker*, which Executrix is since dead; and the said *Wm. Baker* having by his last Will given a Legacy of 400 *l.* to one *Wm. Blew* the late Husband of the Plaintiff, she as his Widow and Administratrix, exhibited her Bill against the Defendant *Tho. Baker* to have this Legacy, and to discover Assets for that Purpose, &c.

The Defendant confessed Assets and the Legacy given to the Plaintiff's Husband, but insists that he is not obliged to pay the same, because by a subsequent Clause in the Will the Testator declared,

That his Meaning was, that if any Person to whom he had given a Legacy, should refuse to pay to his Executrix what should be justly due from them at his (the Testator's) Death,
either

either by Specialty or otherwise, that then such Person should have no Benefit by his said Will.

And it appearing to the Court, that there was a considerable Sum of Money due from *Wm. Blew* (to whom the Plaintiff was Administratrix) to the said *Wm. Baker* the Testator, at the Time of his Death, and more than the Legacy now demanded; which Debt was demanded of him by the said Testator himself a little before he died, and which is not yet paid, tho' it hath been likewise demanded by his Executrix, and which the Plaintiff would have avoided by averring, that the Testator and her Husband lived 12 Years together after making this Will, and that in all that Time he never demanded any Debt of her Husband; from whence her Counsel would now insinuate, that the Testator *Wm. Baker* never intended that Clause in the Will should affect her Husband.

But the Court was of another Opinion, and therefore dismissed her Bill.

Sir Tho. Exton, Cornelius Burton and others, Creditors of the late John St. John the Elder, Esq; Plaintiffs.

Elizabeth St. John, Widow of the said John St. John, and Elizabeth, Blanch and Lucy St. John, Daughters and Coheirs of the said John St. John, and Infants, by their Guardian, and Lewis Monox, Administrator of the said John St. John, and Nicholas Earl of Thanet and others, Defendants.

The Husband purchased Lands of Ten't for Life, who gave collateral Security, that his Son and Heir should convey the Fee-simple when of Age; the Husband died before such Conveyance executed, his Wife shall not have Dower.

JOHNS *St. John* being seised in Fee of the Manor of *Sapcoates*, and of a great Pasture-Ground called the *Face of the Hill*, and having borrowed of the Plaintiffs their Testators and Intestates several Sums of Money, amounting to 3750 principal Money; and *Andrew Burton* late Father of *Cornelius Burton* (one of the Plaintiffs) being bound with the said *John St. John* as his Security in several Bonds in the Bill mentioned; he to save the said *Burton* harmless did, by two Indentures, the one dated 30 Decemb. 1639, and the other 8 Decemb. 1640, convey the said Manor and Premises to the said *Andrew Burton* for several Years yet in Being; and the said *John St. John* failing to pay the said Debts, and several Suits being thereupon brought by the Creditors against the said *Andrew Burton*, he got Possession of the Lands by Virtue of those Deeds.

And afterwards in the Year 1653, conveyed all his Interest in the Premises to his Son *Cornelius Burton* and others in *Trust*, to sell the same, and with the Money arising by such Sale, and with the Profits in the mean Time, to pay the Creditors; and soon after he died Intestate.

Cornelius Burton took out Administration, and several Suits being brought against him and other the Trustees of *And. Burton*, they and the Creditors agreed to convey the Premises to *Edmund Took* and others (Plaintiffs) in Trust for the Creditors; and that the Plaintiff *Cornelius* should be taken in as a Creditor for 500 *l.* in respect of such Charges as he and his Father had already sustained; and to be paid when the said Lands were either *redeemed* or sold; and in Pursuance of that *Agreement*, a *Deed* was executed in the Year 1661, and Possession afterwards delivered to the said *Edmund Took*.

But the Defendant *Elizabeth*, the Widow of the said *John St. John*, brought a *Writ of Dower* against her Son, and upon a feint Defence got Judgment, and afterwards she got Possession against the Plaintiffs of the aforesaid Lands; but left all the rest of the Estate of her Husband untouched, to the Value of 1200 *l. per Ann.* which she ought not to have done.

Because the Manor of *Sapcoates*, out of which she now claimed *Dower*, was bought by the said *John St. John*, of *John Earl of Thanet*, who was but *Tenant for Life*, and the Inheritance thereof descended to *Nicholas now Earl of Thanet*; and the said *Earl of Thanet the Vendor*, gave the said *John St. John* (who purchased the Premises in his own Name, and in the Name of *Oliver St. John of Lincoln's Inn* who survived him) collateral Security, that his Son *Nicholas now Earl of Thanet* should make good the Sale when he came of Age, which was done accordingly to the Defendants, or some of them, *after the Death of the said John St. John*; for which reason it was insisted, that she could not have *Dower* out of the Manor of *Sapcoates*, because her Husband was never seised thereof in Fee.

Neither could she have *Dower* out of the other Lands called the *Face of the Hill*, because she had a Jointure of other Lands which she enjoyed above 12 Years after her Husband's Decease; and this appearing by her Answer to be *the Truth* of the Case,

The Court declared, that she had no Colour of *Dower* out of the Manor of *Sapcoates*; and decreed her Title to it to be discharged, and an Account of the Profits, &c.

And that the Defendants the Infants, when of Age, shall join in a Conveyance to the Plaintiffs of the *Residue of the said Term* for Years, free from Incumbrances by them or by their late Father, or any claiming under them; and the Tenants are to attorn.

But the Court would not impeach the Dower, as to the *Face of the Hill*, &c.

Thomas Fincham, *Plaintiff*.

John Hobbs, *Defendant*.

Statute of
Limitations
pleaded and
allowed.

THE Plaintiff was a *Merchant*, and the Defendant his *Apprentice*, who was made *Factor* and Agent, by and for his said Master both here and beyond Sea, and was entrusted with Wines and other Goods, and Money, both during the Time when he was *Apprentice* and after, and hath given no Account thereof for which the *Bill* is now brought.

The Defendant pleaded, that he had no Wares or Goods of the Plaintiff's since the Year 1663, before which Time he had delivered up to the Plaintiff all his Books of Account; and that the Plaintiff had not since that Time made any Claim or Demand for any Goods but by this Suit, and by another in the Lord Mayor's Court of *London* still depending, and to which the Defendant hath pleaded the same Plea; and that if the Defendant did ever owe or was indebted, or accountable to the Plaintiff for Money, Wares or Goods, it was *nine or ten Years* since; and therefore he pleaded the Statute of *Limitation* of Actions, made Anno 21 Jac.

And the Court allowed the Plea good as to all Wares, Goods, &c. received by the Defendant during the Time of his Apprenticeship, and until he was made Free, but not after his Apprenticeship ended; therefore ordered him to answer that Part of the *Bill*, but without *Costs*.

Thomas Gundry, *Plaintiff*.

George Brown and Anne his Wife, and Elizabeth Gundry, Widow of Thomas Gundry, *Defendants*.

Where a
Debt is due
to one as Ad-
ministrators
to another,
and he makes
an Executor
and dies before
the Debt is re-
covered; this
being a Thing
in Action,
shall not be
charged on his
Executor.

John Gundry of *Lincoln's Inn*, Father of the Plaintiff, was about Aug. 1656, possessed of a considerable personal Estate, and about that Time made his Will, and appointed his Wife Anne an Executor and dies before the Debt is recovered; this being a Thing in Action, shall not be charged on his Executor.

and his Father *Thomas Gundry Joint Executors*, and after some Legacies, &c. he devised to his said Executors all his Goods and Chattels, &c. to be reduced into Money, and laid out in Lands to be settled on her for Life, and afterwards to the Plaintiff and his Heirs; and that his Wife should receive the Increase of the Money till the Lands were purchased, and to allow *Maintenance* to his Children; and about two Years afterwards he died.

The Executors proved the Will, and acted jointly, and some Time after the said *Anne* married the Defendant *George Brown*, and she and the other Executor having possessed themselves of great Part of their Testator's personal Estate laid out 1900*l.* in a Purchase of Lands in *Essex*, and settled the same as by the said Will was directed.

But after that Purchase it was suggested, they received more Money out of the personal Estate which they converted to their own Use; and the other Executor *Thomas Gundry* died about 5 Years since, having first made his Will, and the Defendant *Elizabeth Gundry* his only Daughter, *Executrix*, who proved her said Father's Will; so that the Defendants *Anne* and *George*, and also the Defendant *Elizabeth* ought to be accountable for so much as her Testator received of the said *John Gundry's* personal Estate, and to lay out the same according to his Will.

The Defendant *Anne* by her Answer confess'd the Will, but said that her Father *Henry Hunt* was possess'd of a great personal Estate, and about *July 1656*, made a *nuncupative Will* by which he gave all his Estate to the said *John Gundry* his Son in Law, and to this Defendant *Anne* who was his only Daughter; and that they as *universal Legatees* had the Administration thereof, and by that Means the said *John Gundry* became possess'd of the greatest Part of the said Estate, and soon after died so possess'd of the same, which after his Death was, by the Consent of the said Defendant *Anne*, and the said *Thomas Gundry*, Executors of the said *John Gundry*, sold by one *Simon Gundry*, who was her Father's Servant, and entrusted to dispose of the testamentary Estates of her said Husband and Father, who kept an Account thereof.

But there are several Things in that Account, for which she by her Counsel insisted, she ought not to be accountable to the Plaintiff, particularly that her Father *Henry Hunt* being possessed of the 8th Part of a Ship called the *African*, did according to his Proportion freight her to the *Indies*, which Ship did not return to *England* till after the Death both of her said Husband and Father; and therefore the Silk that was brought home in the said Ship ought not to have been placed to the Account of the testamentary Estate of her Husband, he being then dead; but the same doth belong to her as *surviving Administratrix* of her Father *Henry Hunt*, several of whose Debts are yet unpaid.

That at the Time of the said *John Gundry's Death*, there were several Debts owing to him and to the Defendant *Anne*, as they were Administrators to *Henry Hunt* her Father, which being *Things in Action*, and not recovered till after his Death, cannot be charged on her as his *Executrix*, but belong to her as she is the *surviving Administratrix to her Father*.

That the Defendant *Anne* together with the other Executor of her late Husband *John Gundry*, have laid out 3900*l.* in a Purchase of Lands, and settled the same pursuant to the Will of her said Husband, until which Time she hath allowed Maintenance to the Plaintiff; but he having now an Estate settled on him, she ought not to allow him any farther Maintenance.

The Court was of Opinion, that since *John Gundry* and the Defendant *Anne* his Wife, had taken out Administration with the will annexed of *Henry Hunt*, as universal Legatees, that the same was a sufficient Assent to the Bequest; and thereby the whole Estate of the said *Hunt* did vest in the said *John Gundry* the Husband, (except the Debts unreceived, and those in Action,) and was subject to his Will; and decreed an Account thereof to the Plaintiff with this Direction.

That the Debts of the said *Henry Hunt* which were unpaid at the Death of *John Gundry*, shall be in the first Place paid out of the *Things in Action*, which did survive to the said *Anne*, as Administratrix of her Father *Henry Hunt*; and as far as those fall short, then the other Goods of the said *Henry Hunt* shall in Equity be liable, and be charged with the Payment of the Remainder of the said Debts.

Where a Thing remains in Specie without any Alteration, 'tis in the same Condition with the other Goods of the Testator.

And as to that Part of the Ship, and the Goods therein of the said *Henry Hunt*, and which the said *Anne* claims as *surviving Administratrix* to him; the Court declared, that since they remained in Specie without any Alteration, they were in the same Condition with the other Goods of the said *Hunt*, which did vest in *John Gundry* by his Bequest; and therefore do of Right belong to the Plaintiff, and ought to be laid out as directed by his Father's Will; and the same was decreed accordingly.

William Hodgkinson, *Plaintiff.*

George Moor *and* Elizabeth *his* Wife, *Defendants.*

Richard Hodgkinson late Grandfather of the Plaintiff *William*, having purchased the Reversion and Inheritance of the Farm and Lands in the Bill, after the Determination of a Lease for 3 Lives then in Being; and having afterwards purchased that Lease in the Name of his Son *George Hodgkinson, in Trust for himself*, did, by his last Will in *December 1672*, devise the Premises to *John Hodgkinson and his Heirs*, and soon after died.

A Trust denied, but decreed against the Defendant.

John Hodgkinson entered after the Death of the said Testator, and being seised of the said Reversion, and of the Trust of the Term, conveyed the same to the Plaintiff *Wm. Hodgkinson* and his Heirs, who entered likewise, and was seised of the said Reversion, and became entitled to the equitable Right of the remaining Part of the said Term.

But *George Moor* the Defendant, having married *Elizabeth* the Widow of the said *George Hodgkinson*, and she being the Executrix or Administratrix of her said Husband, in whose Name the said Lease was purchased by *Richard Hodgkinson*, and so became entitled to the said Term, (tho' his Name was only used in Trust for *Richard, which they denied*) have brought an *Ejectment*, and have obtained a Verdict and Judgment at Law, against which the Plaintiff prayeth by his Bill to be relieved.

This being the very Case, the Court decreed the Defendants to deliver up the Possession of the Premises to the Plaintiff, and to assign the said Lease to such Person as he shall appoint to hold the same, against the Defendants and all claiming under them.

That the Judgment in *Ejectment*, and any other Judgment obtained in an Action for the mean Profits, (if any such there be) shall be vacated in the Record thereof.

But that the Defendants are not to give the Plaintiff any Account of the Profits, which they, or either of them, have received out of the Premises, unless they refuse to deliver up the Possession, nor then but only for the Profits received after such Refusal.

Elizabeth Ironmonger, *Widow, Plaintiff.*

John Ironmonger, *Gent. Defendant.*

The elder Brother covenanted for himself and his *Heirs*, the Lands were Borough *English*, and descended from the Father to the younger Brother; yet the Heir of the younger Brother was decreed to perform that Covenant.

Humphrey Ironmonger, late Husband of the Plaintiff, being seised in Fee of the Lands and Houses in the Bill mentioned, did about 21 *Years* since upon a Treaty of Marriage to be had between him the said Humphrey and the Plaintiff Elizabeth, enter into Articles to certain Persons, &c. by which he covenanted for himself and his Heirs, that in Consideration of the said intended Marriage, he would, within 6 Months after the Date of the said Articles, convey and assure the Premises to the Persons therein mentioned and their Heirs, to the Use of the said Humphrey for 99 Years, if he should so long live, &c. and afterwards to the Use of the Plaintiff for her *Jointure*; and after her Decease, to the Use of the Heirs of their two Bodies, Remainder to the Heirs of the Survivor.

The Marriage took Effect, but no Conveyance was made pursuant to the said Articles; Humphrey died without Issue; and now the Defendant claims a Conveyance from John Ironmonger the Defendant, who is Heir to the said Humphrey; but he refuseth to convey pursuant to the said Articles, pretending that Humphrey had no Power to bind him by any Covenant.

And now the said John by his Counsel insists, that tho' Humphrey did by the said Articles covenant for himself and his Heirs to make such a Conveyance; yet that he (the Defendant) is not bound by that Covenant, because he is the Son of James Ironmonger who was the youngest Brother of the said Humphrey; and that the Messuage and Lands in Demand are Borough English, which by the Custom of the Borough of Stafford (where the said Lands do lie) descended to the youngest Son, (and that is to the Defendant) who for that Purpose hath exhibited his cross Bill, to have the Possession and an Account of the Profits, &c.

But on the other side it was said, that Lands held in Borough English, do pass by Deed and Fine as other Lands; and that Win. Ironmonger late Father of her Husband Humphrey, and of the said James Ironmonger, was a Purchaser of the Lands now claimed by John the Son of James, for a valuable Consideration, who gave them to Humphrey, and that her Title under those Articles ought not to be impeached; but that the said John Ironmonger ought to make an Estate according to the Covenant of her said Husband, she claiming the same as a Purchaser for a full and valuable Consideration, having brought a very considerable Fortune into his Family.

This being the Case, the Court was of Opinion, that *Elizabeth* ought to be relieved upon the Covenant in these Articles, and decreed *John* to execute to her *and her Heirs*, a good Conveyance of the Premises, according to the Intent of the said Articles; and in Default thereof, she and her Heirs shall hold and enjoy the Premises against the Defendant and his Heirs, and all claiming under him.

Elizabeth Chapman *an Infant*, by Hannah Stout
her Guardian, Plaintiff.

William Crockley *the Elder and Younger*, Defendants.

F*Rancis Chapman* the Father of the Plaintiff, by his last Will devised to her, and to her *three Sisters* 80*l.* a-piece, payable to them at their Ages of twenty-one Years, or Days of Marriage; and the 3 Sisters being now dead, the Plaintiff demanded the whole (being 320*l.*) of the Defendants who had purchased the Lands charged with those Legacies, who had Notice thereof at the Time of the Purchase.

Legacies given to four Sisters, payable at 21, or Marriage; three of them died, the Survivor claimed the whole; that Time.

but not being twenty-one, or married, the Court would not Decree Payment till that Time.

This being the Case, the Defendants by their Counsel insist, That the Plaintiff *is not of Age*, and the Legacy is not demandable till she is of *full Age*, or *married*, and then they will pay it; but in the mean Time, that she cannot give any Release or Discharge for the same.

Such Legacies are accounted conditional in the Civil Law, tho' the Word Condition is

not inserted; for the Validity depends on a Condition, (*viz.*) payable at a Time to come, so that the Legatary hath no Right till that Time is come. *Dom. 2. Vol. 181.*

The Court would not compel the Payment any otherwise than the Will directed; and therefore it was decreed to be paid at the *Age of 21*, or *Marriage*, which should first happen; and that the Persons of the Defendants, as well as their Lands by them purchased, do and shall stand chargeable therewith, (*viz.*) with the Payment of the said 320*l.*

Andrew

Andrew Clench, *Gent. and Rose his Wife*, Francis
Wife, *Gent. and Mary his Wife*, *Plaintiffs*.

Dorothy Witherly, *Widow*, Thomas Witherly *an*
Infant, by the said Dorothy his *Guardian*, and
James Hobert, *Esq;* *Defendants*.

Surrender of
a Copyhold
to the De-
fendant and
his Heirs,
without any
Condition,
but it ap-
pearing that
it was only
to secure the
Payment of
Money, a
Redemption
was decreed.

SIR Miles Hobert being seised of several *Copyhold* Lands,
held of the Manor of *Blofeild Thorp* near *Norwich* and
Upton, did about *December 1661*, in Consideration of *100 l.*
which he borrowed of *Edmund Witherly*, late the Husband of
the Defendant *Dorothy*, and for securing the Repayment thereof,
surrender the said *Copyholds* to the said *Edmund Witherly* and
his Heirs, without any manner of Condition therein expressed;
and as a farther Security, he gave the said *Witherly* a Judgment
for *200 l.*

But by a Note in Writing, under the Hands of the said *Sir*
Miles Hobert and *Edmund Witherly*, dated in *November* before,
it was agreed, that if *Sir Miles* should in *January 1662*, pay
unto the said *Edmund* *106 l.* and all such Money as he should
disburse for *Fines* for his Admittance and otherwise, &c. then
the said *Edmund* should surrender back the said *Copyhold* to
him and his Heirs, and then also acknowledge Satisfaction on
the said Judgment for *200 l.*

Edmund Witherly was admitted accordingly, and afterwards
he surrendered the Premises to the Use of his Will, and thereby
devised Part thereof to *Dorothy* his Wife, and left the other Part
to descend to his Son *Thomas Witherly* the Infant.

Since which Time, several Estates have been carved out of the
Premises by the said *Dorothy*, after the Death of her Husband
Edmund Witherly, to several Persons, and she and her Son *Tho-*
mas pretend they have an absolute Estate therein.

But it appearing to the Court, that the said Surrender and
Judgment were only Securities for the Repayment of the said *100 l.*
lent by the aforesaid *Edm. Witherly*, the Plaintiffs have entitled
themselves to a Redemption; and the same was decreed accord-
ingly, and that the Defendants account, &c.

And particularly, that the said *Dorothy* shall account for so
much of the said *Copyholds* as she hath sold, or procure the Pur-
chasers to surrender back the same to the Plaintiffs who are the
Daughters and Coheirs of *Sir Roger Smith*, who purchased the
said *Copyhold* and several other Lands, of the said *Sir Miles*
Hobert; and they to hold and enjoy the same,

And that the said *Dorothy*, if she be living when the said *Thomas Witherly* shall be of full Age, shall, together with him the said *Thomas*, surrender back to the Plaintiffs *Rose* and *Mary*, and their Heirs, all the several Moieties of the said Copyholds; and in the mean Time, that they and their Heirs shall have Liberty in the Names of the said *Dorothy* and *Thomas*, or either of them, to bring Actions at Law or in Equity, for the Recovery of the Possession or Profits of any of the Premises, they to indemnify the said *Dorothy* and *Thomas* from the Costs, Charges and Damages thereof; and from and after the Recovery thereof, the same to be enjoyed by the said Plaintiffs and their Wives, &c.

George Davy and Elizabeth his Wife, Executrix of
Thomas Day, Plaintiff.

Sarah Pollard, Widow, Defendant.

THE Plaintiff *Elizabeth* was the only Daughter of *Thomas* The Husband decreed to make a Settlement on the Wife, &c. *Day*, and Legatee and Executrix of his Will, and she together with her Husband *George Davy*, now exhibit their Bill against the Defendant *Sarah Pollard*, by which they demand a Sum of 200*l.* for which she gave Bond to the Testator the Plaintiff's Father.

The Defendant *Sarah Pollard* owns by her Answer, that she entered into such Bond, but that she paid 50*l.* in Discharge of the said Testator's Debts; and thereupon had her Bond delivered up to be cancelled; and that the remaining 150*l.* was lent in *August* 1674 to one *Gibbon*, on a Mortgage of an House in *Long-Acre*, and that the same is well secured and ready to be paid with Interest as the Court shall direct, so as the same may be preserved for the Benefit of *Elizabeth* the Plaintiff, and not to be spent by her Husband.

This appearing to be the Case, the Court declared, that since *Geo. Davy* the Husband had not, nor would make any Settlement or Provision for his Wife, the aforesaid 150*l.* so secured by the Mortgage of the said House, shall continue and remain on the Security, until the same shall be laid out, or otherwise secured for the Wife, or till this Court shall make further Order therein.

Thomas Thomlinson *and* Mary *his* Wife, Henry Hoare *and* Anne *his* Wife, *and* John Hollis *and* Joan *his* Wife, Plaintiffs.

Richard Smith, Defendant.

Devise of a Term to his Daughters after the Death of his Wife, whom he made Executrix; she assented to the Legacies, and assigned the Term to one who had purchased the Inheritance, having sufficient Assets to pay her Husband's Debts; the

Term was decreed to the Daughters.

William Adams the Father of the Plaintiffs Mary, Anne, and Joan, being possessed of a Term for Years of an Inn called the *Black-Horse Inn*, situate in *St. Thomas-Street* in *Bristol*, did about the Year 1654, by his last Will devise the same to his Son Roger Adams for ten Years after the Decease of his Wife, or Change of her *Widowhood*, and after the Expiration of the said ten Years, then he devised the Residue of the said Term to his said 3 Daughters Mary, Anne, and Joan, equally to be divided amongst them, or to such of them as should be then living, and made his Wife Anne sole Executrix, who assented to the said Legacies, and entered and enjoyed the Premises during her Life; and died about 12 Years since, about which Time there was 18 Years of the said Term to come and unexpired.

After the Death of the said Anne, the Defendant Richard Smith purchased the Interest of the said Roger in this Inn, having before purchased the Inheritance; and after the said ten Years were expired, the Plaintiffs entered as Devisees by the said last Will of their Father William Adams, and exhibited a Bill to have an Account, &c. and that the Remainder of the said Term might be decreed to them.

But the Defendant refused to give them Possession, claiming the Premises by Virtue of an Assignment of the said Term to him by Anne the Executrix of William Adams, in Consideration of 150*l.* which he paid to her, the better to enable her to discharge the Debts of the said Testator, she not having sufficient Assets for that Purpose; and thereupon she delivered up to the said Defendant Smith the original Lease; and that since he entered, he hath laid out several Sums of Money in the necessary Repairing the said Inn;

And that since the Plaintiffs have charged, that the said Anne the Executrix did assent to their Legacies, they have a proper Remedy at Law notwithstanding the said Assignment; and therefore he insisted by his Counsel, that they ought not to have any Relief in this Court.

But the Court being satisfied, that the said *Wm. Adams* left sufficient Assets to pay his Debts; and that *Anne the Executrix* did assent to the said Legacies, decreed to the Plaintiffs the Residue of the said Term; and that the Defendant should account to them for the Rents and Profits over and above the Rent reserved in the original Lease, from the Expiration of the 10 Years, during the Remainder of the said Term, according to the Value thereof, when the Defendant first entered, in Case the Plaintiffs will accept it.

But if the Plaintiffs shall insist to have the Account taken according to the present Value, then the Master to take an Account of what Money the Defendant hath laid out for the necessary Repairs and Improving the Premises; and in taking the said Account he is to have respect as well to the Interest of the said *Anne*, and to the Term of 10 Years which *Roger* had in the same, as to the Plaintiffs Interest, and also to the Inheritance; and to allow the Defendant proportionable Shares of all such Money by him laid out in Repairs and Improvement of the Rent, out of the Money that shall be coming to the Plaintiffs.

But if the Plaintiffs will accept the Account according to the Value of the said *Inn*, at the Time when the Defendant entered, then the Master is only to examine what that Value was, and accordingly to take the Account, and to certify what will be thereupon due to the Plaintiffs, &c.

Henry Newby, *Plaintiff*.

Susan Cooper, *Defendant*, & econtra.

John Cooper, late the Husband of the Defendant, mortgaged to the Plaintiff *Henry Newby*, the Messuage and Lands in the Bill mentioned for securing the Repayment of 200*l.* and Interest, which said principal Sum he borrowed of the said *Newby*, and was likewise indebted to the said *Newby* in 70*l.* more for *Lime sold and delivered*, which he the said *Cooper* (as it was suggested) agreed should be secured on the said Mortgage, but died before he paid the said principal Sum, or the Debt for the said *Lime*.

Thereupon the Plaintiff brought an Ejectment, and obtained a Verdict and Judgment; and now exhibited this Bill to foreclose the Defendant *Susan Cooper*, unless the Principal and Interest, and the Debt for the *Lime* be paid on a certain Day, &c.

Bill to foreclose if Principal and Interest, and a Debt upon Simple Contract be not paid on such a Day: decreed accordingly; but not the Debt on Simple Contract.

The Defendant denied, that she did know any Thing of the said *Lime Debt*, or of any Agreement to pay the same; but that two Persons (naming them) offered to pay and tendered to the Plaintiff all his Principal Money and Interest then due on the Mortgage, and before the Declaration in Ejectment was delivered.

And her cross Bill was to redeem.

The Court decreed the Principal Sum and Interest to be paid to the *Time of the Tender*, at a Time and Place to be appointed by the Master, discounting the mean Profits, &c.

Jane Travell, Widow, and other the Creditors and Legatees of John Danvers, Esq; deceased, Plaintiffs.

Rowland Danvers Son and Heir, and Elizabeth Danvers, Widow of the said John Danvers, and Executrix to his Will; and Nicholas Mees and Ambrose Holbetch, Defendants.

One Trustee decreed to relinquish to the other, and the Heir at Law decreed to relinquish his Right to the Purchaser, when he shall come of Age, being now an Infant.

John Danvers being seised in Fee of the Manor of Upton, with the Appurtenances in the County of Warwick, settled 120*l.* per Ann. thereof on the Defendant Elizabeth his Wife for her Jointure; and being indebted to the Plaintiffs in several Sums of Money, he made Provision to pay the same, and Portions and Maintenance for the other Plaintiffs the Legatees his Children, and gave Instruction to the Defendant Ambrose Holbetch to draw his Will in the manner following.

ff. To give all his Lands of Inheritance to Mees and Holbetch, and their Heirs, in Trust to sell the same; and out of the Monies arising by such Sale, in the first Place to pay his Debts, and in the next place, in case his Wife should join in the Sale, and release her Jointure before Sale to the Trustees, then they were to Place out at Interest in their Names 1000*l.* she to have the Interest thereof from Time to Time during her Life; and gave several other Legacies to the Plaintiffs.

The Residue of the Money to be raised by such Sale, he gave to the Defendant Rowland Danvers, and by his Will directed that in case his said Wife did join in the Sale, and would accept the Interest of 1000*l.* in lieu of her Jointure, then he gave all his personal Estate to her, and made her sole Executrix; but if she refused, then he gave the same to his said Trustees to be sold, and the Monies arising by that Sale to be apply'd to-
wards

wards *the Payment of his Debts*, and made them Executors, and shortly after he died.

And now the Creditors and Legatees exhibit a Bill, and pray a Discovery of the Will, and Relief.

The Defendant *Rowland Danvers the Infant* claims the Estate as Heir at Law, in case the Will should not appear to the Court to be a good Will, and prays the Care and Assistance of the Court; the Executrix admits the Will, and is willing that it should be performed in every Thing, and that she would join in the Sale, and release her Jointure.

The Trustees likewise own the Trust, but that *Ambrose Holbetch* would relinquish it, and *Nich. Mees* is willing to accept it, and to account.

Whereupon the Court decreed, that *Holbetch* should release the Trust to *Mees* and his Heirs, and that he should sell the Premises devised to be sold.

That *Rowland* the Heir when of Age, (and if he die before, then his Heir) shall relinquish his and all their Right in the Premises to such Person who shall purchase the same, and to his or their Heirs; and in the mean Time the Purchasers their Heirs and Assigns shall enjoy the same.

That *Elizabeth* shall relinquish her Jointure to *Mees* and his Heirs, and join with him in the Sale, &c. and thereupon he shall place out 1000 *l.* at Interest, and pay the said Interest to her during her Life.

The Residue of the Monies to pay Debts, and if not sufficient to pay both Debts and Legacies, then the Debts shall first be paid, and afterwards the Legatees shall abate in Proportion to their Legacies; and *Elizabeth* shall have 60 *l. per Ann.* and the Residue shall be applied to the Trust; and the Trustees to be allowed their Costs and Charges out of the Money by such Sale, and they shall be indemnified for what they do in Pursuance of the said Trust.

John Luntley, *Plaintiff.*

Royden and others, *Defendants.*

THE Mother of the Plaintiff being possessed of a *Brew-house*, and of a considerable personal Estate, made her Will, and thereby (amongst other Things) directed, that after her Debts and Legacies were paid, the Residue of her Estate should

The Executor carried on a Trade in Brewing with the

Testator's Stock; decreed to account for the same, and likewise for the personal Estate.

bc

be put into the *Chamber of London*, for the Use of her Son the Plaintiff, and made the Defendants her Executors, and died.

The Defendant *Royden* only acted, the other renounced the Executorship; and about the same Time the Plaintiff was seduced to *Barbadoes*.

But *Royden* the Executor, instead of raising what he could out of the Estate, and putting it into the *Chamber of London*, kept on the *Trade of Brewing* in the aforesaid *Brewhouse*, and employed great Part of the Testatrix's personal Estate in the Trade, to carry it on; and when the Plaintiff returned into *England*, he by his Bill demanded an Account of the whole, and likewise of the Profits made in the *Trade*; the Defendant was willing to account for the personal Estate, but refused to give an Account of the Profits made in the *Trade of Brewing*.

The Court decreed an Account of all which came to his Hands or Possession, and likewise of the Profits of the *Brewhouse*, and the *Trade of Brewing*, since the Death of the Testatrix (the Plaintiff's Mother;) and if it shall appear that he brought in any of his own Money to carry on the Trade, in such Case, he shall be repaid the same with Interest at 6l. per Cent. from the Time the same was brought in.

And as to the Labour and Pains of the Defendant in carrying on the said *Trade*, and managing the same, the Master is to report the same specially, and then the Court will give farther Directions therein.

Thomas Moor an Infant, by David Moor his Father
and Guardian, Plaintiff.

Thomas Agar, Defendant.

Trustee for
an Infant
decreed to
execute his
Trust, and
to pay the
Infant 500l.

Thomas Agar the Grandfather, late *Deputy Clerk of the Crown*, had Issue only one Daughter married to *David Moor*, by whom she had Issue *Thomas Moor* (the Plaintiff) her only Son.

when he shall be seventeen Years old.

Thomas the Grandfather being possessed of a great personal Estate, and intending to bring up his said Grandson in the Study of the Law, bought a *Chamber* for him in *Pump-Court in the Middle Temple*, in the Name of his Nephew *Thomas Agar* the Defendant, in Trust for the Plaintiff; and sometime after he furnished his Study there with proper Books, and his said Cham-

Chamber with Bedding and other Furniture; all which he (the Grandfather) declared, that he intended for the Plaintiff *Thomas Moor*, and that he should enjoy the same with the *Chamber*.

But the Defendant (as it was suggested in the Bill) insinuated himself with the said *Thomas Agar* his Uncle, and persuaded him to make a Will, wherein he gave the Plaintiff 500*l.* to be paid at his *Age of twenty-one Years*, and made the Defendant *sole Executor*; who by Virtue thereof entered and possessed himself of the said *Chamber*, and broke open the Study-Door (without the Knowledge of the Plaintiff) or of his Mother with whom the Key was left at the Grandfather's Death, and by his Order; and tho' the Defendant seems willing to give the Plaintiff Security for the said 500*l.* yet he will not permit the Plaintiff to enjoy the said *Chamber*, or let him have the Books and Furniture thereof, pretending (and so he says in his Answer) that *Thomas Agar* his Uncle declared to him, that he bought the same for him the said Defendant.

But it appearing upon Proofs in this Cause, that there was a Trust for the Plaintiff as well for the *Chamber*, as for the Books and Furniture, and that the Plaintiff (being now an *Infant*) ought to enjoy the same.

It was decreed, that the Defendant shall give to the Plaintiff and to his Mother, upon Oath, a true and perfect Catalogue and Schedule of all the Books and Furniture that were in the Chamber, at the Time of the Death of the said *Thomas Agar* the Grandfather; and that as soon as the Plaintiff shall attain his *Age of * 17 Years*, then the Defendant shall deliver to him (the Plaintiff) the quiet Possession of the said *Chamber, Books and Furniture*, and to surrender and assign all the Estate, Right and Interest *that he hath in the said Chamber*, to the Plaintiff and his Assigns, &c.

twelve, were called in the *Roman Law Impuberes*; and when they were above that Age, they were called *Adulti*; so that the Plaintiff being in this Case to have the Legacy at seventeen, the Court might think him capable at that Age to make Right Use thereof.

But if that the Plaintiff should die before he is *17 Years of Age* (living the Defendant) then the Defendant shall have the Benefit of the said *Chamber*, but not otherwise; and the Defendant shall give his own Recognisance to the Master to pay the said 500*l.* to the Plaintiff, at such Time as he shall be of the *Age of 17 Years*, &c.

John Sweet, *Gent. Plaintiff.*

Elizabeth Hole, *Widow, Defendant.*

Award decreed to be performed by one Co-executor, though he lived 12 Years after the Award made, and the other Coexecutor made no Demand in all that Time.

Lewis Sweet the Father of the Plaintiff being possessed of a considerable personal Estate, did, about *May 1661*, make his Will, of which he made *Robert his Brother* and *John Sweet* (the Plaintiff) Executors, to whom after the Death of *Agnes* his Wife, he devised a Tenement called *C.* for the Term he had therein, and soon after died.

The Executors proved the Will, but *Robert* possessed himself of all the Bonds and other Specialties, and Goods and Chattels of the said Testator, promising to give a just Account, and that the Plaintiff should have his Share therein.

That over and above the said Estate, the Testator in the Year 1654, settled a Farm called *H.* on the said *Robert* in Tail, for which he was to pay to the Executors of the said Testator 500*l.* within one Year after his Death, which said Sum ought to be accounted as Part of the Testator's personal Estate.

But tho' *Robert* enjoyed the said Farm, yet he never paid or accounted for the said 500*l.* nor for any more than 400*l.* of the said personal Estate, altho' he had exhibited an Inventory to the Value of 2751*l.* and in that there were many Omissions and Undervaluations.

Thereupon Differences arising between the said Executors concerning their Testator's personal Estate, the same were referred to certain Arbitrators; and mutual Bonds were given to stand to their Award: And the Arbitrators awarded, that the said personal Estate should be divided between the said Executors equally; and that afterwards each Party should give to the other general Releases.

And the said *Robert* having the greatest Part of the Estate in his Hands, he promised to deliver up the same to the Plaintiff, pursuant to the said Award; and the Plaintiff relying upon that Promise gave *Robert* a small general Release.

But the Plaintiff wanting his Share of the said personal Estate to discharge some Debts which he had contracted, and the said *Robert* not having Money as he pretended, borrowed 200*l.* of one *Thomas Hody*, and 300*l.* of one *Holland*, for which he gave Bond, and desired the Plaintiff to give Security for the Payment thereof by a Mortgage of certain Lands which he had called, *Bowden*; and for the Sum of 30*l.* which *Robert* lent him at that Time, until there should be a perfect Account made and settled between them.

Thereupon the Plaintiff by a Deed 3 *June* 24 *Car.* 2. for securing the said 530 *l.* to the said *Robert*, and to indemnify him from the Payment thereof, for which he had given *Bond* as aforesaid, granted the said Lands, called *Bowden*, to the said *Robert* for 2000 Years; Proviso to be void on Payment of the 530 *l.* on the Days and Times therein mentioned.

The Plaintiff could never bring *Robert* to account, and divide the said Testator's Estate according to the Award; and when he tender'd him the 530 *l.* with an Intention to have his Mortgage delivered up, *Robert* declared, that upon a just and fair Account there would be nothing due, and that he (the Plaintiff) should have his Mortgage delivered to him to be cancelled.

But *Robert* being now dead, having made his Will, and the Defendant *Elizabeth* his Executrix, (who is since married to one *Hole*, and he being likewise dead,) and the said *Elizabeth* having proved the Will, the Plaintiff hath exhibited his Bill, praying that he may have his Share of what was awarded to him as aforesaid, &c.

The Defendant owned the Charge in the Bill, but believes, that the personal Estate of *Lewis Sweet* the Testator was equally divided between his Executors, (of which the Plaintiff is one) and that the said *Robert* had performed the Award.

And that she ought not, as *Executrix* of *Robert* or otherwise, to be drawn into any Account, for that *Robert* lived twelve Years after the said Award made; and saith, that tho' *Hody's* Debt was paid, yet she was sued for *Holland's* Debt of 305 *l.* and paid the same, together with 40 *l.* Costs, and 6 *l.* spent in Prison, and that on Payment thereof, and other Sums by her expended, she is willing to assign the said Mortgage.

The Court decreed an Account and a Distribution of what was awarded, as well as a Redemption of the Mortgage, but the Account of the Mortgage to be taken apart, and not to attend the Account on the Award.

That the Master shall compute what Money is due to the Defendant, for what either she or *Robert* paid on Account of the said Securities by *Bond*, together with her Costs at Law, and in this Court, and what Fees were paid upon her Imprisonment; and that upon the Plaintiff's paying what the Master shall find due to the Defendant, she shall reconvey the said mortgaged Premises to the Plaintiff, or to whom he shall appoint, free from Incumbrances by her or her Testator, and for Default of Payment the Plaintiff to be foreclosed, and to make the Defendant any farther Assurance of the said mortgaged Premises.

That the Master see whether the Award was performed by *Robert*, or what Benefit or Distribution hath been had or delivered to the Plaintiff, of *Lewis Sweet's* Estate, and if Distribution thereof was not made unto him according to the said Award,

D d d

then

then the Defendant shall be answerable and accountable to the Plaintiff for the same, in such Manner as the Master shall appoint, &c.

Richard Trigonnell, *Plaintiff*.

James Forbes, *Defendant*.

Demurrer
to a Bill to
discover an
Agreement
which the
Plaintiff
made with
the Defen-
dant for
Tithes, &c.

THE Plaintiff exhibited a Bill, to be relieved concerning an Agreement made between him and the Defendant, for all Manner of *Tithes* which he was to pay for his (the Plaintiff's) Lands in the Parish of *B.* and to be relieved against several Verdicts had at Law by the Defendant against him for *Tithes*; and that the Defendant might set forth what the Agreement was, and what was actually due to him for *Tithes* for 4 or 5 Years last past.

The Defendant demurs, for that the Plaintiff ought to have set forth what the Substance of the Agreement was, and what Sum was paid in Lieu of Tithes, or what Sum was actually paid; and whether it was paid for the Tithes of Lands then in the Possession of the said Plaintiff, and for all other Lands which he might at any Time enjoy; all which he might have set forth, being in his own Knowledge.

And for that it is not charged in the Bill, that the Witnesses to prove this pretended Agreement were either dead or beyond the Seas when the Plaintiff was sued at Law, and a Verdict against him, so that the Plaintiff might have pleaded the Composition at Law, or given the same in Evidence at the Trial; therefore the Defendant ought not to be obliged to set forth the Kinds, Quantities and Values of the respective Tithes, which have been due for four or five Years past, the same being properly in the Cognisance of the Plaintiff, who was Owner and Proprietor of the Lands out of which they were to be paid.

The Court allowed the *Demurrer*.

Humphry

Humphry Wall, *Gent. Plaintiff.*

Arthur Eastmead *and* Thomas Hakes, *Defendants.*

JOHN Eastmead by his last Will devised 100 l. to his Daughter *Eleanor*, the Wife of the Defendant *Thomas Hakes*, and made the other Defendant *Arthur Eastmead* Executor, and soon after died.

Bill for 100 l.
which the
Plaintiff
claimed as
a Gift; the
Defendant

demurred, for that the Gift was made by a Feme Covert who was not capable to give, and for that he did not set forth by what Act or Deed he claimed.

And now the Plaintiff exhibited his Bill, claiming this 100 l. as a Gift to him by the said *Eleanor*, a little before her Death.

The Defendant demurs, for that it appears by the Bill, that this 100 l. was devised to the said *Eleanor*, who at the Time of the Bequest, and at her Death, was a Feme Covert, for that she was then the Wife of the Defendant *Thomas Hakes*, and thereby rendered incapable of disposing the said Legacy without the Concurrence of her Husband, so that the said 100 l. belongs to the Administrator of *Eleanor*, who is no Party to this Suit, as he ought to be; for otherwise the Defendant the *Executor* cannot be indemnified upon Payment thereof to the Plaintiff, being only accountable to such Administrator, and may by him be drawn into another Suit for one and the same Matter; and such *Administrator*, and not the Plaintiff, is well intitled to Relief in this Case; and the Plaintiff's Bill not shewing by what Instrument or Act he claims the said 100 l. &c.

The Court allowed the Demurrer.

Susan Marlow Widow, Plaintiff.

John Maxie and Thomas Chaplin, Gent. William and Richard Marlow, Joseph Beamond Dr. in Divinity, Henry Parker, Esq; and John Lamb, Gent. Defendants.

Marriage-Settlement decreed to be performed, tho' the Husband left the Wife in a better Condition than she would have been by the Settlement.

Richard Marlow late Husband of the Plaintiff Susan, in Consideration of 600 l. to be paid to him as her Marriage-Portion by William Cook her Father, (of which 300 l. was to be paid on their Marriage, and 300 l. more within a Year after the Death of the said Cook) made a Feoffment to the said William Cook of several Freehold Lands, and covenanted to surrender certain Copyhold Lands to the Use of the said Richard Marlow, until the said Marriage, and afterwards to him and the said Susan, and to the Survivor of them for Life, Remainder to the Use of the Heirs of their two Bodies, Remainder to his own right Heirs; and covenanted to pay the Fines to the Lords of the Manors, of which the said Copyholds were held, in Case he should not within 7 Years purchase Freehold Lands of 60 l. per Annum, clear of all Reprizes, and settle the same to the aforesaid Uses; and farther covenanted, that if the said Susan should survive, to leave her 300 l. at his Death, over and above her said Jointure of 60 l. per Annum, if she should be living a whole Year after the Death of her said Father, or leave no Issue of her Body, &c. and gave a Bond of 600 l. for Performance of Covenants.

The Marriage took Effect, and William Cook the Father paid 300 l. of the Marriage-Portion, and soon after made his Will, by which he devised to the said Richard Marlow (the Plaintiff's Husband) all his personal Estate, and some other considerable Estate mentioned in the Bill, and made him sole Executor, by Virtue whereof he might have received more than 300 l. being the Residue of her Portion; and the Plaintiff surrendered a Copyhold Estate to her said Husband of the Value of 12 l. per Annum, being her own Inheritance, which he enjoyed during his Life.

But the said Richard Marlow never made any Livery upon the said Deed of Feoffment, nor surrendered the said Copyhold pursuant to his Covenant before Marriage, nor purchased any Lands of 60 l. per Annum Value, in Lieu thereof; but about June 1675 he made his Will, and devised all the Lands mentioned in his Marriage-Settlement unto the Defendant Richard Marlow

Marlow and his Heirs, and gave to the Plaintiff the Use of his Plate, Linen, &c. for her Life; and in Case the said Devisee *Richard Marlow* did not release all his Right to other Lands mentioned in the Will, to one *William Marlow*, (who was Heir at Law to the said Testator) then what he before had given to the said *R. Marlow*, should be and remain to the said *William Marlow*, his Heirs and Assigns for ever, and made the Defendants *Maxie* and *Chaplin* Executors.

The Testator died, and then *R. Marlow* and *William Marlow* severally claimed the said *Freehold and Copyholds*, which the Plaintiff ought to have for her Jointure; and the other Defendants *Beamond*, *Parker*, and *Lamb*, Lords of the Manors of which the Copyholds were held, refuse to admit her; and the Executors refuse to pay the Fines and the 300 *l.* which her Husband covenanted to leave her, if she survived; and have cancelled the said Bond of 600 *l.* for Performance of Covenants in the Marriage-Deed; and have entered into the Lands and received the Profits, and converted the same to their own Use, tho' they have Assets more than sufficient to pay all Debts and Legacies.

Therefore the Plaintiff exhibited her Bill, and prayed a Decree for the said Lands according to the said Indenture; and that the *Lords* might admit her to the Copyholds; and that the Executors may pay the *Fines* upon such Admittances, and account for the Profits which they have received ever since her Husband's Death; and that they may pay her the said 300 *l.* and deliver up the Plate and the Rest of the specifick Legacies; and that *William* and *Richard Marlow* may execute Conveyances, when they are at Age, to the Plaintiff for Life, pursuant to the said Indenture, &c.

It was argued in Behalf of the Defendants, that the Plaintiff's Husband made a better Provision for her, than if he had performed the Covenants in the Marriage-Indenture; for by his Will he devised to her for Life the Messuage where he lived, with the Appurtenances, and all the Lands, Meadows and Pastures therewith used in *Bourne*, and the Use of his Plate, &c. and an Annuity of 50 *l. per Annum*, issuing out of the Lands comprised in the Marriage-Deed, and out of other Lands late of one *Edward Clerke* in *East-Bourne* for her Life; and likewise devised to her two Tenements there for her Life.

But if she should insist on any Jointure, *Dower*, or other Benefit out of his real Estate, other than the said Annuity, whether on the Marriage-Agreement, or on any other Thing by him formerly done or suffered, then the said Annuity to cease and be void.

The Counsel for the Executors of *Richard Marlow* admit, that he left Affets, but as to the 300 *l.* which he was to leave the Plaintiff, if she survived, they say, that the like Sum of 300 *l.* which was to be paid as the remaining Part of her Portion by the Executors of her Father *William Cook*, within a Year after his Death, was never paid by them to her Husband *Richard Marlow*; and therefore his Executors ought not to pay the 300 *l.* to the Plaintiff, which their Testator covenanted should be paid to her in Case she survived; and that the Lands which her Father *William Cook* devised to her said Husband, should have been sold by his Appointment for the Payment of his Debts, and for raising the said 300 *l.* to be paid to her Husband, and therefore the Plaintiff ought not to have the said 300 *l.* and the Land both.

The Counsel for the Lords of the Manor say, they are willing to admit the Plaintiff to the Copyholds, upon Payment of the respective Fines, &c.

The Court decreed, that the Plaintiff should enjoy all the Freehold and Copyhold Lands in the said Indenture, from henceforth for her Life; and the Lords of the Manors to admit her to the Copyholds for Life, and the Executors to pay the Fines on Demand; and the two *Marlows* to execute Conveyances to her of the Freehold Lands for Life, and to deliver the Possession both of Freehold and Copyhold to her forthwith; and likewise of the Tenements in *East-bourne*, unless such Settlement of 60 *l. per Annum* be made on her as aforesaid.

And that notwithstanding such Settlement be made, the Plaintiff is not to be excluded from enjoying the Lands mentioned in her Husband's Will, which were her own Inheritance, and descended on her immediately upon the Death of her Father.

And if *William Cook*, the Plaintiff's Father, left sufficient Affets to her Husband, who was Devisee and Executor, so that he might have received the other 300 *l.* being the Residue of the Marriage-Portion, then the Executors of her Husband shall pay her the 300 *l.* which he covenanted to leave her, if she survived; and then also the Plaintiff shall have her Costs in this Court, but the Lords of the Manors shall have their Costs, &c.

Francis Mason, *Plaintiff*.

John Goodburne and Ellen his Wife, and John
Fellowlove and Ellen his Wife, *Defendants*.

George Mason, Uncle to the Plaintiff Francis, (who was Bill to bring
Heir at Law of George) on his Marriage with the a Deed in-
Defendant Ellen, now Ellen Fellowlove, the Daughter of to Court,
John and Ellen Goodburne, had the Messuages and Tene- and to per-
ments in the Bill conveyed to him, the said George, and his Testimony
Heirs, in Consideration of the said intended Marriage, and of Witnesses.
of 212 *l.* paid by him to the said Goodburne; and this was This is ac-
by a Deed executed by the said Goodburne, bearing Date cording to
28 Jan. 19 Car. 2. the Usage
of the Ro-
man Law in
Cases where

any one foreseeing that he might have Occasion for Proof by Witnesses, and fearing they should die before he should have Occasion to use their Testimony; and the Method is first to exhibit a Bill in Chancery, and therein to set forth a Title, and that the Witnesses to prove it are old and not likely to live; by which the Plaintiff is in Danger to lose it; and then to pray a Commission to examine them, and a *Subpœna* to the Parties concerned, to shew Cause, if they can, to the contrary; and these Depositions are not to be used against any other than the same Defendants, or those claiming under them.

Afterwards the said George Mason, by another Deed dated 30 Jan. 20 Car. 2. settled the Premises upon himself and the said Ellen his Wife, and the Survivor of them for Life, and to the Heirs of their two Bodies, Remainder to his own right Heirs.

The Plaintiff Francis Mason bought an House in *Workfop* in *Nottinghamshire*, in the Name of the said George Mason, for 110 *l.* but it was his own proper Money, and the House was bought in *Trust* for him the Plaintiff.

In April 1672, George died without Issue, so that all the Lands of which he died seised, came and descended on the Plaintiff, but that the Defendants detain the Deeds, so that he cannot make out his Title; and the Defendant Ellen hath brought her Writ of Dower.

Therefore the Plaintiff exhibited his Bill, and prays, that the Deed dated 28 Jan. may be brought into Court, and that the same may be preserved by the Testimony of Witnesses, and he quieted in the Possession.

The Defendants admit what was alledged in the Bill as to George Mason, but say, that before he died, he cancelled the Deed dated 30 January, and afterwards by Will devised the Lands therein mentioned to his Defendant Ellen, then his Wife, who now insists to keep the Deeds in Defence of her Title.

The Court ordered the original Deed, dated 28 Jan. to be brought into Court, and not to be taken out without Leave of the Court, and both Sides to have Copies of it attested by the Master; and the Plaintiff to be quieted in the Possession of the House in *Workfop*, and all other Lands late of *George Mason*, except what is devised by his Will to the Defendant *Ellen*, which she is also quietly to enjoy.

That the Depositions of Witnesses to prove the Deeds 28 and 30 Jan. shall remain to perpetuate the Memory thereof, and to be used, in Case of Death or Inability to travel, as there shall be Occasion.

Sir William Luckin, Baronet, Plaintiff.

John Rushworth, Esq; and Bridget, Elizabeth, Anne, Dorothy, Mary and Hannah, Sisters and Coheirs of Edward Pinchon deceased, Son and Heir of John Pinchon Esq; deceased, Defendants.

College Leases were mortgaged, and the Term being almost expired, those Leases were renewed by the Trustee and Executor of the Mortgagor, and decreed subject to the Payment of his Debts.

JOHN *Pinchon*, the Father of *Edward* and of his six Sisters and Coheirs, (against whom this Suit was now revived after the Death of the said *Edward*) being possessed of several College Leases, (as in the Bill) and of several other Freehold and Copyhold Lands therein mentioned; and being indebted to the Father of the Plaintiff, *Sir William Luckin*, in the Sum of 4000*l.* did, amongst other Things, mortgage the said College Leases to him (the Father) for securing the Repayment of the said principal Sum and Interest; and, as a farther Security, entered into a Statute for the Payment thereof.

Afterwards the said *John Pinchon* made his Will, and thereby directed, that his College Leases should from Time to Time be renewed by his Executors, and so much of his Estate as could be, should be kept entire, so as the Revenue thereof might be the better upheld; and devised his Freehold and Copyhold Lands to the Defendant *Rushworth* (and other Trustees since dead) to pay his Debts, and to such other Uses as in the Will, and made them Executors thereof, and died much indebted.

There being some Incumbrances on Part of the Freehold and Copyhold Lands thus mortgaged to the Plaintiff's *Father*, he entered, and got Possession of so much as he could.

But the Defendant *Rushworth*, to obstruct him from having the Debt satisfied, renewed one of the *College Leases in his own Name*, but in *Trust* for the Children of the said *John Pinchon*, (as he pretended) and so likewise every four Years he renewed all the Leases held of the College, which were first in Mortgage to the Plaintiff's Father; as also the other College Leases of *Ruddle* and *Boxwell*, and the old Leases being expired, he entered by Virtue of the new Leases, and brought an Ejectment, and recovered the Possession from the now Plaintiff, Sir *William Luckin*, who claims the same by the Will of his said Father, dated in the Year 1659.

But the said Defendant *Rushworth* now pretends, that the Leases assigned by the said *John Pinchon* to the Plaintiff's Father, were sufficient to discharge the said Debt of 4000 *l.* and that he might have levied the same before the Expiration thereof, he knowing when they would be determined, and therefore claimed the *renewed Leases* for the Benefit of the Children of the said *John Pinchon*.

The Counsel for the Plaintiff Sir *William Luckin* insisted, that tho' the mortgaged Leases were *renewed after the Date of the Will of John Pinchon*; yet his said *Will* did sufficiently operate on those Leases, so as to subject them to the Payment of his Debts.

But on the other Side it was argued, that the Will did not, nor could operate on those Leases, because they were expired by Efflux of Time, and that therefore the whole Term, which was in Mortgage, was run out, and that the Plaintiff had no more Right against the Defendant than he had against the *College*.

The Court declared, that since the Debt was secured by a *Statute* as well as by a Mortgage of the College Leases, the same ought to be satisfied out of all the Estate of the Debtor both in Law and Equity; and that the *Renewing the said Leases in the Name of the Defendant Rushworth* ought not to shelter or protect his Estate against the just Debt due to the Plaintiff; for tho' his Mortgage did bind but a particular Part of his Estate, yet the *Statute* bound the Whole; and tho' by the Will the *College Leases* were not made subject to the Payment of the Testator's Debts, as the *Freehold* and *Copyholds* were, yet the Debt of 4000 *l.* ought to be made good out of his whole Estate.

Therefore it was decreed, that the Plaintiff allowing the several *Fines*, *Gratuities* and *Charges* which the Defendant hath expended, and all Rent paid to the *Colleges*, and other Money paid for *renewing any Leases of the said Testator John Pinchon*, at and since his Death, from the several Times the

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same

same were so paid and disbursed; and discounting such clear Profits as have been actually received by the Defendants; since the Plaintiff hath been ejected; thereupon he shall be let into the Benefit of the said *renewed Leases*; and that then the Defendant shall assign and convey them to him in such Manner as the Master shall direct, to hold against the Defendant and all claiming under him since the Bill exhibited, till he shall be satisfied the said 4000 *l.* and Interest, deducting such Profits which have been received either by the Plaintiff or his Father, &c.

Samuel Smith, *Plaintiff.*

Robert Eaton *and* John Oldis, *Defendants.*

Judgment
set aside, be-
ing procured
on Purpose
to over-
reach a fair
Purchase.

IN *May* 1672, the Plaintiff purchased Lands of the Defendant *Oldis* of 40 *l. per Annum*, for which he paid 800 *l.* and the other Defendant *Eaton* knowing of this Purchase, in *October* following procured a *Warrant of Attorney from Oldis*, to confess a Judgment of 400 *l.* as of *Easter-Term* before, on Purpose to *over-reach* the Plaintiff's Purchase, when in Truth all the Purchase-Money was paid to *Oldis*, excepting 70 *l.* which the Plaintiff *Smith* was to keep in his Hands till an Incumbrance, of which he had Notice, was cleared.

This *Warrant of Attorney* was procured upon a Pretence, that *Oldis* owed *Eaton* 400 *l.* whereas, upon an Account stated between them since the Judgment, there was but 88 *l.* due to *Eaton*, and no more, upon which Account the Plaintiff by his Counsel insisted.

This being the Case, the Court decreed, that, upon Payment of 70 *l.* to *Eaton* with Interest, from the Time the same ought to have been paid to the said *Oldis*, a perpetual Injunction be awarded against the said *Eaton*; and that he shall either acknowledge Satisfaction upon the said Judgment, or assign it to the Plaintiff; and on Payment of the 70 *l.* the Plaintiff shall be indemnified against *Oldis*.

Term. Sanct. Mich.

30 Car. 2. Anno 1678.

Thomas Owens *and* Winford Owens, *the Churchwardens and Overseers of the Poor of the Parish of Langenew in the County of Denbigh, Plaintiffs.*

George Bean *and* Grace *his Wife*, Richard Clerke *and* Lawrence Atterbury, *Defendants.*

Edmund Owen being possessed of a considerable personal Estate, ^{Devise of a} did in the Year 1673, amongst other Things, devise 100 ^{Charity to} ^{the Poor of} ^{a Parish in} ^{one County,} to be laid out by his Executors, with the Advice of ^{but that Pa-} ^{rish was in} ^{another} ^{County,} the Supervisors of his Will, to purchase Freehold Lands in ^{good.} some convenient Place, the Profits thereof to be paid to the Plaintiffs *Thomas and Winford Owens*; and after their Decease the same should every Year be distributed for ever on the *Eves of Easter and Christmas*, amongst the poor Inhabitants of the *Parish of Langenew in the County of Montgomery*; whereas there is no such Parish in *that County*, but in the *County of Denbigh*.

The Court was of Opinion, that since there was such a Parish in the *County of Denbigh*, the Testator must mean that Parish, because it appeared that he was born there, and that both he and his Parents lived and died in that Parish.

Bartholomew Soam, and William Soam an Infant by the said Bartholomew his Father and Guardian, Plaintiffs.

John Bowden and John Eyles, Executors of Thomas Knight Merchant, Defendants.

The Master received 250 l. with an Appren- tice, and died within two Years; decreed, that the Executors shall pay back the Money as a Debt upon simple Contract after Debts on Specialties are paid.

THE Plaintiff *Bartholomew* having in the Year 1674 placed *William Soam* his Son, Apprentice to *Thomas Knight* for seven Years, to be brought up a Merchant; for which the Plaintiff was to give the said *Knight* 250 l. and had paid Part of the Money; in Consideration whereof the said *Knight* did covenant, that after some Part of the Time of the *Apprenticeship* should be spent, he would send his said Apprentice to be his *Factor beyond Sea*, and to provide him Lodging and Diet during the seven Years; and the said *Bartholomew* the Plaintiff covenanted to find him Clothes during that Time, and Indentures of *Apprenticeship* were accordingly executed between them.

But about two Years afterwards, (*viz.*) in *April* 1676, the said *Thomas Knight* died, having in that little Time employed his said Apprentice only in some inferior Affairs, and left him unprovided, who thereupon returned Home to the Plaintiff his Father, who now, together with his said Son, exhibited this Bill against the Executors of the said *Thomas Knight* to discover Assets; and having paid all the said 250 l. that the same might be repaid to him, or that the said Executors might place out the said *William Soam* to some other sufficient Merchant, who might perform with him as the Testator was to do, if he had lived.

The Defendants say, that they have not Assets sufficient to pay above half the Debts owing by their Testator upon Bonds and other Securities, the greatest Part of his Estate consisting in Goods and Effects in several Factors Hands, and in several Countries beyond Sea, and in several Ships and Shipping, and in Debts standing out; for which Reasons they (the Executors) cannot exhibit an Inventory, nor give the Plaintiffs any Account thereof, but that they shall be willing to act in the Executorship.

And as to the paying back the 250 l. to the Plaintiffs, or providing another Merchant to take the Apprentice, they shall

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be willing to do what the Court shall direct, as far as they shall have Assets after the Debts on Specialties are paid.

The Court decreed the Defendants to account from Time to Time for the personal Estate of the Testator which shall come to their Hands, and how they have or shall dispose the same.

And that after they have paid the Debts of their Testator due and owing upon Specialties, then to pay the Plaintiff the said 250 *l.* as a Debt due upon simple Contract, as far as there shall be Assets to do it, deducting after the Rate of 20 *l.* *per Annum* for the Maintenance of the Apprentice, during the Time he lived with his Master.

Robert Lloyd, *Gent. Plaintiff.*

William Williams *Clerk, and Martha his Wife,*
and Owen Owens, Defendants.

THE Bill was, to set aside a Will made by one *John Lloyd*, who was the Husband of the Defendant *Martha*, now deceased; for that the said Will was irregularly obtained; and, amongst other Things, to discover what Portion the said *Martha* brought to her late Husband *John Lloyd*, who made this pretended Will.

Demurrer to a Bill of Discovery, for that the Plaintiff made out no Title to have a Discovery.

The Defendants by their Answer deny that the Will was irregularly obtained, and * plead the same in Bar.

And as to the other Part of the Bill they demur; it appearing, by the Plaintiff's own Shewing, that he hath no Title to have such a Discovery as prayed.

* The Plea not allowed.

The Court allowed the Demurrer with *Costs*, but ordered the Plaintiff to reply to the Plea.

Susan

Susan Salter, *Widow of William Salter, and Administratrix to Anne and Susan Salter, the Daughters of the said Susan and William Salter, deceased, Plaintiffs.*

Dr. George Stradling and Margaret his Wife, Sir Charles Cleaver, and Charles Cleaver an Infant, by his Guardian, and the Lady Sophia Chaworth Widow, *Defendants.*

Levise of a Deafe, &c. in Trust to permit his Wife to receive the Profits, &c. and after her Death, to her two Daughters and their Heirs; and if they die without Heirs of their Bodies, then to the right Heirs of the Testator.

BRian late Bishop of Winchester, being possessed of the Manor of Potterne in Wiltshire, by Virtue of a Lease made thereof by the Bishop of Salisbury to Sir Richard Chaworth, in Trust for the said Brian, did in the Year 1661 by his Will reciting the said Lease, devise 200 l. per Annum to be paid out of the Profits thereof to William Salter (the Plaintiff Susan's late Husband) his Nephew for Life; and that the Estate in Law in the said Lease should continue in the said Sir Richard Chaworth, during the Life of the said Sir Richard; the Surplus of the Profits to go to the said William Salter, to whom he devised the said Lease after the Death of the said Richard; and made his Wife and the said Sir Richard Executors, and died.

Both the Daughters died without Issue, and Intestate, and their Mother administered; and it was decreed, that she had a good Title to this Lease, and not the right Heirs of the Testator.

The Executors proved the Will, and the said William Salter being seised of the Manor of R. in Iwer in Buckinghamshire, and of other Lands which were settled on him in Marriage with the Plaintiff Susan, and 3400 l. paid as her Portion, (*viz.*) on him for Life, and afterwards on her for Life for her Jointure, Remainder to the Issue of their Bodies; and he having borrowed of one Webb a great Sum of Money, prevailed with his said Wife, the Plaintiff Susan, to join with him to mortgage the Iwer Estate to the said Webb.

About August 1664, William Salter made his Will, and devised the Iwer Estate to Sir Charles Cleaver, and to Sir Robert Child, in Trust to sell the same, and to pay Webb the Mortgagee, and all other his Creditors, &c. and disposed of the

the Surplus to the said *Susan* his Wife, during her Widowhood; but if she should marry or die, then it should go to the Maintenance of his two Daughters *Anne* and *Susanna*.

And as to his Interest in the Estate at *Potterne*, he devised the same to the said *Cleaver and Child*, in Trust to permit his Wife *Susan* to receive the Profits thereof during her Widowhood, upon Condition, that once in seven Years she should agree with the *Bishop of Salisbury* to make up the Term 21 Years; but if she should marry, then the Trustees were to pay her 200 *l.* for her Life every Year, and after her Death the Profits were to go to his said two Daughters *Anne* and *Susanna*, and to the Survivor of them and their Heirs; and if they died without Heirs of their Body, then to his own right Heirs.

And that all his Money and personal Estate should be to his Executors, for the Benefit of his said Daughters; and he made his said Wife *Susan* and the said *Cleaver and Child*, his Executors, and soon after died.

The Executors proved the Will, and possessed themselves of all the personal Estate, and sold the *Iwer Lands*, excepting only to the Value of 400 *l.* or thereabouts.

The Plaintiff *Susan*, since the Death of the said *William Salter* her Husband, hath renewed the Lease of *Potterne* with the *Bishop of Salisbury*, according to the Will of the said Testator; and the legal Interest in that Lease being now vested in the Lady *Chaworth*, the Widow and Executrix of Sir *Richard Chaworth*, in whose Name it was originally taken, in Trust for the said *Susan* and her two Daughters, who both dying Intestate, and the Plaintiff *Susan* being Administratrix to them, is not only intitled to the Surplus of her late Husband's personal Estate, and of the Money arising by Sale of the *Iwer Lands*, and the other Lands there not yet sold, but to the Residue of the Term and Trust of the Lease of *Potterne*, as Administratrix to her said two Daughters, according to the Will of her said Husband *William Salter*; and therefore the Lady *Chaworth* ought to assign the same to her, according to the Trust thereof.

But the Defendant *Charles Cleaver* the Infant, who is the eldest Son and Heir of the Lady *Cleaver* deceased, one of the Sisters and Coheirs of the said *William Salter* the Testator, and the Defendant *Margaret* the Wife of *Dr. Stradling*, the other Sister and Coheir of the said *William Salter*; pretend, that the Lease of *Potterne* ought to come to them as Coheirs of the said *William Salter*, and the Lady *Chaworth* pretends, that there is 400 *l.* due to her as Executrix to her late Husband Sir *Richard Chaworth*, (tho' the Trustees ought to have paid that Money

Money by the Sale of the *Iwer Estate*) and therefore she refuses to assign the Residue of the Term and Lease of *Potterne*; and Sir *Charles Cleaver* the surviving Executor, and Trustee of the Will of *William Salter*, refuses to give the Plaintiff *Susan* an Account of the Money raised out of the real and personal Estate of the said Testator, and to sell that Part of the *Iwer Lands* which are not yet sold, and to pay the said Testator's Debts, and restore the Surplus to the said *Susan*, who now exhibited her Bill to have the *Lease of Potterne* assigned to her, &c.

The *Lady Chaworth* offers to assign it as the Court shall direct, upon Payment of the 400 *l.* and Interest due to her.

But Dr. *Stradling* and his Wife, and *Charles Cleaver* the Infant, insist, that the Interest of the *Lease of Potterne* ought to come to them as Coheirs to *William Salter* the Testator, and not to the Plaintiff *Susan* as Administratrix to her two Daughters, because (as it appeared) they consented to sell a good Part of Copyhold Lands, which would have come to them as Heirs of the said Testator; and this was to advance the Sale of the *Iwer Estate*, on Purpose to preserve *Potterne*, which otherwise must have been sold for the Payment of the Testator's Debts; they conceiving, that *Potterne* (after the Death of *Susan*) would come to them, if the two Daughters died without Issue, &c.

The Court declared, that the Interest of the *Lease of Potterne* was vested in the Plaintiff *Susan*, and that the Heirs at Law of the said *William Salter* the Testator, had no Manner of Interest therein.

Therefore it was decreed, that the said *Susan* should pay 400 *l.* and Interest to the *Lady Chaworth*, and Costs of Suit; that she shall assign the said Lease to *Susan* freed from Incumbrances made or done by her, or by her late Husband Sir *Richard Chaworth*, and in so doing she shall be indemnified therein; and also from any Breach of her Husband's just and reasonable Covenants to be made after such Assignment.

That Sir *Charles Cleaver* shall forthwith sell so much of the *Iwer Estate* which remains unsold, and therewith pay the *Lady Chaworth*, or so far as it will extend to pay her, and other the Debts of the said Testator; and that he account with the Plaintiff *Susan* both for the personal Estate and the Money raised out of the real Estate of the said Testator, and to pay her what shall remain in his Hands as Administratrix to her Daughters, after Payment of their Father's Debts according to his Will.

Samuel

Samuel Starling *an Infant*, by Jane his Mother,
and Guardian, Plaintiff.

The Master and Wardens of the Drapers Company, Sir Joseph Sheldon, Sir James Edwards, James Hickson, Esq; Edward Wilford, and Emery Hill, Defendants.

SIR Samuel Starling and Dame Mary his Wife, by Indenture dated 4 Jan. 24 Car. 2. and made between them of the one Part, and the said Sir Joseph Sheldon, and Sir James Edwards of the other Part, granted to them and their Heirs, all his Freehold, Messuages and Lands in London, in Trust for such Persons, and for such Terms as he by his last Will, or by any other Writing should appoint; and for Default of such Appointment, to his own Right Heirs.

Money due on Mortgage decreed to be paid out of the personal Estate of the Mortgagor; and a Trust was likewise decreed to be transferred.

Afterwards he appointed such Part of his Estate (as in the Bill mentioned) to the Master, Wardens and Society of the Drapers and their Successors for ever; one Moiety of the Rents for the Relief of the Poor of the said Company for ever, and the other Moiety for the Increase of their Stock; another Tenement to Christ Church-Hospital and their Successors; another to the Wardens of the Brewers Company; and directed the said Trustees to convey thirteen other Tenements in the Parish of St. Sepulchres London, to the Company of Drapers and their Successors for ever; upon Trust to pay the Plaintiff Samuel Starling the Infant 50*l.* per Ann. for his Maintenance, and 100*l.* for placing him out to some Calling when he should be sixteen Years of Age; and that when he was twenty-four Years old, then to convey the said thirteen Tenements to him and his Heirs Males; and for Default thereof to the Right Heirs of the said Sir Samuel Starling for ever; and made the Defendants Wilford and Hill his Executors, and died possessed of a great personal Estate.

Afterwards the Executors proved the Will; and it appeared, that the Testator owed the Defendant James Hickson 500*l.* upon a Mortgage of the Premises thus devised to the said Infant, and the Executors, tho' they confess Assets, would charge the Payment of the said 500*l.* upon the real Estate of the Testator; and the Trustees refuse to convey to the Company of Drapers, pretending they would not accept the Trust of the Houses.

Therefore the Plaintiff exhibited this Bill, praying that the Executors might discharge this 500*l.* out of the personal Estate; and that the mortgaged Premises may be discharged from the same; and that the said Sir Joseph Sheldon, and Sir James Edwards may convey the same to the Use of the Plaintiff, according to the Will of their Testator.

This appearing to be the Truth of the Case, the Court decreed the Executors to pay the 500*l.* out of the personal Estate, together with Interest and Costs to Hickson the Mortgagee; and afterwards the mortgaged Premises to be discharged thereof.

And that the Trustees convey the said mortgaged Premises to the Company of Brewers, to whom the Company of Drapers shall transfer the Trust which they had by the Will, and to pay what Rents they have already received, and to be indemnified.

That the Company of Brewers receive the Rents and Profits in the Tenant's Hands, and those which shall hereafter grow due, and out of the same to pay the said 50*l.* per Ann. and the Arrears to the Mother and Guardian of the Infant, and for his Maintenance and Costs of this Suit, to be allowed to them (the Brewers) out of the Infant's Estate.

Term. Sanct. Hill.

31 Car. 2. Anno 1678-9.

Andrew Pitcairne *an Infant, the Son of Charles Pitcairne of Twittenham, by Richard Grahme his Guardian, Plaintiff.*

Gerard Brase *and Elizabeth his Wife, one of the Daughters and Coheirs of William Wheeler of Datchett; Martin Vandenkanker and Mary his Wife, another of the Daughters and Coheirs of the said William Wheeler; Charles Pitcairne and Anne his Wife, another of the Daughters and Coheirs, &c. Dame Katharine and Frances Wheeler, other of the Daughters and Coheirs; and John Whitehal and Alice his Wife, another of the Daughters and Coheirs of the said William Wheeler, Defendants.*

William Wheeler of Datchett, by his Will dated 13 April 1648, devised the Manor of Datchett and other Lands there to his Son William, and the Heirs Males of his Body; and for want of such Issue to the Heirs of the Testator in Tail Male; and for Default of such Issue to Sir William Wheeler of Channel-Row, and his Heirs; upon Condition to pay to the seven Daughters of the Testator, (*viz.*) to the Defendants Elizabeth, Mary, Anne, Jane, Katharine, Frances and Alice, or to such of them who should be living at his Death, 500*l.* to be equally divided between them; and if Sir Wm. Wheeler should refuse to pay that

Devise to William the eldest Son of Charles, who was the eldest Son, but his Name was Andrew; decreed a good Devise. 'Tis so in the Civil Law; as for Instance

where the Testator devised Lands or Tenements by a wrong Name, if this Mistake appears otherwise by Circumstances, so that the Will of the Testator may be sufficiently known, the Legacy shall have its Effect, though the true Name is Mistaken. *Dom. 1. Vol. 54.*

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Sum, then the Premises to go to such Daughters and their Heirs; and soon after the Testator died, and *William* his Son entered and enjoyed the said Manor and Lands during his Life, and was now dead without Issue.

On the 20th of June 1665, and whilst *William Wheeler* the Son was living; Sir *William Wheeler* made his Will, reciting the Expectancy which he had to the Manor of *Datchett*, and an absolute Estate in Fee of a Meadow there called the *Fleet*; he devised all his Estate and Interest in the Premises to *William Pitcairne*, eldest Son of *Charles Pitcairne* of *Twittenham*, and the Heirs Males of his Body, (meaning the Plaintiff, whose Christian Name was *Andrew*;) the Plaintiff being then and now the (eldest Son of *Charles*) Remainder to the second, third, and all other the Sons of *Charles Pitcairne* in Tail Male; upon Condition that they as they should severally inherit, should take upon them the Surname of *Wheeler*, and bear the *Wheeler's* Arms quartered with their own paternal Arms for ever; and should likewise pay the said 500 *l.* to the Daughters; and if he or they refused, he devised the Premises over, and died.

The Plaintiff by this Means is entitled to the Meadow called the *Fleet* in Possession, and upon the Death of *Wm. Wheeler* without Issue, who died without barring the Entail to Sir *William*, is entitled to the Manor of *Datchett* and Premises; and now he exhibited his Bill to have the Writings, and to receive the Profits, &c. that he might pay the said 500 *l.* to the Daughters.

The Defendants, the Coheirs of *Wm. Wheeler* their Father, and their Husbands, have entered and received the Profits ever since the Death of *William the Son*, and keep the Writings, and insist that *William Pitcairne* the Plaintiff hath no Title by the Will of Sir *Wm. Wheeler*, because his (the Plaintiff's) Name is not *William*, but *Andrew*, and the 500 *l.* is not paid according to the Will which they insist to be a *Condition Precedent*; and their Counsel argued, that such Wills were voluntary Dispositions of Estates, and ought not to be supported in Equity to the disinheriting of Heirs at Law.

But the Court was of Opinion, that the Plaintiff should have Relief, and decreed an Account of the Profits received by the Defendants, with Interest, since the Death of *William the Son*, and the Payment of the 500 *l.* and Interest since his Death, discounting the Profits and Interest from that Time, &c.

Sir

Sir John Otway and Elizabeth his Wife, and Braithwaite Otway an Infant, by Sir John his Father and Guardian, Plaintiff.

Robert Braithwaite, Gentleman, Dorothy Sandys, Widow, and Dorothy Braithwaite, Defendants.

SIR *John Otway*, upon the Marriage of the said *Elizabeth*, who was the Daughter and Heir of *John Braithwaite*, and Niece and Heir of *Thomas Braithwaite* his elder Brother; and in Consideration of a Provision and Settlement agreed to be made by the said Sir *John* on that Marriage, the afore-said *Tho. Braithwaite* 18 Apr. 1661, did then execute a Deed of his *Yorkshire Lands, &c.*

An Agreement made by Deed-Poll, by the Uncle, in Consideration of the Marriage of his Niece, and a Settlement made on her by her Husband, decreed to be performed; and that his personal Estate ought to come in Aid of such Agreement.

And it was at the same Time agreed, that the said *Thomas* the Uncle should permit all his Lands in *Westmorland* and *Lancashire*, as well Copyhold as Freehold, to descend and come to the said Niece *Elizabeth* and her Heirs, if he died without Issue; and that he would do no act to bar the Descent, and should charge the same with 500*l.* and no more.

Thereupon the Marriage took Effect, and Sir *John* made a Settlement according to his Agreement; and afterwards had Issue the said *Braithwaite Otway*, and several other Children.

But *Robert Braithwaite* the Defendant some Time after prevailed on the said *Thomas* in the Year 1671, to make some Conveyance to charge the *Westmorland Lands* with the Payment of 1000*l.* to the Defendant *Dorothy Sandys*, within a Year after his Death, and 300*l.* more to the said *Dorothy* at a certain Time therein appointed; and charged his *Lancashire Lands* with 700*l.* to the Defendant *Robert*, in the whole 2000*l.* which was more by 1500*l.* than he ought to do by the said Agreement.

And that afterwards the said *Thomas* made his Will, and thereby devised to the said *Robert* and *Dorothy* other Part of his Lands, and all his personal Estate which in Equity ought to be subject to the original Agreement made between him and the Plaintiff, and made the said *Robert* and *Dorothy* Executors, and died.

And now the Plaintiffs exhibit their Bill, to have the Benefit of the said Agreement, and that the Defendants may execute a Conveyance pursuant thereunto.

But they the said Defendants by their Counsel insist, that the said *Agreement was only Poll*, and not executed in the Life-time of *Thomas*, nor such as the Plaintiffs could compel to be executed; he the said *Thomas* having by *Deed and Will* made another Disposition of his Estate in his Life-time; and that there can be no Foundation for a Decree to enforce the Performance thereof; and they set forth the said Deed and Will, and an old Entail made by an Ancestor of *Thomas*.

The Court declared the Agreement was fully proved, and also the Consideration thereof, and a Settlement made by *Sir John Otway* in Pursuance and Compensation thereof; and that in Conscience it ought to be performed; and that the *Yorkshire* Lands ought to be held and enjoyed by the Plaintiffs; and that the personal Estate of *Thomas* ought to come in Aid and Supply of the said Agreement, and which ought to be performed as far as any of the Lands not entailed are liable thereunto.

And therefore since an Entail was set up of the *Lancashire* and *Westmorland* Lands by an Ancestor of *Thomas*, so that he had not any Power to make such Agreement concerning those Lands; therefore it was decreed, that if there were any of his Lands in those Counties not entailed, the same should be liable to the *Agreement* charged only with 500*l.* and shall be settled on the *Lady Otway* and her Heirs, &c.

Margaret Shermer, Widow, and Jane Shermer,
Executrixes of William Shermer, Plaintiffs.

Richard Robbins, Henry Trinder, John Cox, and
Leonard Hawkins, *Defendants.*

Decree to foreclose the Equity of Redemption, signed and enrolled, and a Purchase made under such a Decree; yet another was allowed to redeem.

IN August 1655, William Shermer lent Richard Robbins (the Father of the Defendant) 800*l.* who for securing the Repayment thereof with Interest, mortgaged his Lands, and made Oath they were free from Incumbrances; and in March 1657, the said Robbins borrowed 200*l.* more of the said Shermer, for which he confessed a Judgment, having before given the said Sherman a Statute for 600*l.* as a farther Security for the Payment of the said 800*l.* and the said Robbins the Mortgagor, who borrowed the 200*l.* as aforesaid, agreed, that if Default should be made of Payment thereof at such a Time, then within

one Month after, the mortgaged Lands should be sold, or so much thereof as would discharge the said 1000*l.* with Interest.

At this very Time the said *Robbins* was likewise seised in Fee of other Lands, which ought to be subject to this *Statute and Judgment*.

In the Year 1662, *Shermer* made his Will, the Mortgage being then forfeited, and devised the 3*d* Part of his personal Estate to the Plaintiffs in Trust for his Children; and he made the said Plaintiffs his Executors, and died.

About two Years afterwards the Plaintiffs exhibited their Bill in this Court against *Richard Robbins* the Mortgagor, and against *Trinder*, *Cox* and *Hawkins*, to discover Incumbrances, and to foreclose the Equity of Redemption, if the 1000*l.* and Interest was not paid by such a Day.

Robbins the Mortgagor discovered a prior Incumbrance made to Dr. *Ingelo* for 520*l.* on Part of the Premises in Mortgage to the said *Shermer*, which the Plaintiffs soon after bought in, and had Dr. *Ingelo's* Mortgage assigned to them; and about a Year after the said *Robbins* the Mortgagor died Intestate.

After his Death his Son *Richard Robbins* the Defendant, set up a Judgment of 1600*l.* given by his Father in the Year 1653, to the other Defendant *Trinder*, which was two Years prior in Time to *Serman's* Mortgage, which Judgment was only a Counter-Security to indemnify him and *Hawkins* against a Bond of 800*l.* Penalty, in which they were bound with and for the said *Robbins* the Father; and tho' that Bond was satisfied, yet the Judgment was kept on Foot, on Pretence of a Deed executed by the said *Robbins*, that it should remain as a Security to indemnify *Hawkins* from several other Engagements for the said *Robbins*; tho' if any such Deed was made, it was after the Statute and Judgment to *Shermer*, and so ought not to be kept on Foot to shelter subsequent Incumbrances; therefore the Plaintiffs exhibited their Bill to set aside the said Judgment, and to be relieved in the Premises, &c.

The Defendants *Cox* and *Trinder* were only brought to a Hearing, and *Cox* insisted, that the Debt of 1000*l.* and Interest due upon *Shermer's* Mortgage was almost all paid; for that *Robbins the Mortgagor* and his Son did in 1662, by Fine and Deed, convey to the said *Shermer* a Farm, called *Woodwards Farm*, in Satisfaction of 960*l.* Part of the said 1000*l.* and that the Plaintiffs had an Assignment of Dr. *Ingelo's* Mortgage upon paying of 520*l.* to him when the Lands in that Mortgage were worth above 800*l.* to be sold.

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However that the Plaintiffs ought to have no Relief against *Cox*, because *Robbins* the Father in *October* 1650, mortgaged Part of the Premises contained in *Sherman's* Mortgage to one *Smith* for the Payment of 200*l.* and in *November* following, he mortgaged the other Part to one *Partridge* for 300*l.*

That in *April* 1656, *Partridge's* Mortgage being forfeited, he assigned it to one *Browning*, who afterwards bought in *Smith's* Mortgage, being about a Month prior in Time.

That in 1666, *Browning* exhibited his Bill in this Court against *Robbins* the Mortgagor to have his Money, or to be foreclosed; that the Cause was heard and referred to an Account, and the Master reported 780*l.* to be due, which was decreed to be paid on a certain Day, and the same not being paid, the Premises were decreed to *Browning*, which Decree being signed and enrolled the Premises were thereby vested in him of whom *Cox* purchased the same.

That in *April* 1663, *Robbins* the Mortgagor having declared and agreed, that the Judgment of 1600*l.* to *Trinder* should stand as a Security to indemnify *Hawkins* as well as *Trinder*; and *Hawkins* being in Prison for a Debt due from *Robbins*, and for which he (*Hawkins*) was bound, the said *Trinder* in 1666, assigned his Judgment of 1600*l.* to *Hawkins*, on which Judgment Part of the Premises was afterwards extended; and *Hawkins* obtained a Decree against *Browning* for the Mortgaged Lands in his Possession, upon paying his principal Money, Interest and Costs.

Afterwards *Hawkins* in Consideration of 1300*l.* paid to him, assigned the said Judgment and Extent to this Defendant *Cox* and *Browning*; so that now *Cox* is a Purchaser for a valuable Consideration under the said Decree and Judgment; and that *Browning's* Mortgage was precedent to *Shermer's*, of which the Plaintiffs cannot have the Equity of Redemption; because *Robbins* the Mortgagor was barred of that Equity; of which the Plaintiffs had sufficient Notice.

Therefore *Cox* pleads, that he is a Purchaser for a valuable Consideration, and prays that his Security may not be impeached in this Court, and *Trinder* submits to what the Court shall direct.

The Counsel for the Plaintiff insists, that the Assignment of *Browning's* Mortgage to *Cox*, and the Assignment of the Judgment and Extent to him by *Hawkins*, ought to be considered separately; for tho' *Cox* may have an Equity to be paid what is due on *Browning's* Mortgage, it being prior in Time to that of *Shermer*, and which for that Reason the Plaintiffs the *Shermers* are willing to pay; yet notwithstanding that Decree by which *Robbins* the Mortgagor was foreclosed, the Plaintiffs ought to be let in to redeem *Browning's* Mortgage.

But there is no Reason why the Judgment, assigned to Cox by Hawkins, should take Place before the Plaintiffs are satisfied; because that *Agreement and Declaration* which Robbins made, that the Judgment would stand as a Security to indemnify Hawkins, was made in April 1663, which was eight Years after Shermer's Mortgage, so could not affect that Mortgage; especially since at that Time Cox had Notice of the Plaintiff's Interest, the same being set forth in Browning's Bill to foreclose, and in the Decree it self.

However Cox had no Manner of Interest till he purchased it from Browning, nor then if Browning had not purchased Smith's Mortgage, which was prior in Time to Shermer's Mortgage; and this Court never protects Purchasers of prior Incumbrances, but where they have been concerned with the Land before for a valuable Consideration, and came innocently into the Purchase.

Purchasers of prior Incumbrances never protected in Equity, but where they have been concerned before with

the Lands for a valuable Consideration, and come innocently into the Purchase.

The Court, upon reading an Account stated between Shermer and Robbins in the Year 1666, whereby there appeared to be due to Shermer the Sum of 1931*l.* declared that the Conveyance of Woodward's Farm was only as a farther Security for the Principal and Interest then due to Shermer; and that the said Decrees were gained by the Conveyance of Cox; and therefore ought not to foreclose the Plaintiff's Shermer's Equity, but that they ought to be let in to redeem Browning's Mortgage without paying the Money due on Hawkins's Judgment, which Judgment ought in Equity to be accounted satisfied as to them; and that the Defendant Cox ought not to keep it on Foot against the Plaintiffs, he coming in voluntarily; and decreed the same accordingly; and that the Judgment and Extent thereon be set aside, and shall not be insisted on, as to any of the Plaintiffs Securities; and that a perpetual Injunction, be awarded, to stay all Proceedings at Law on the said Judgment, as to any Lands which are or shall be liable to the Plaintiffs Security now in Question.

The Effect of a Mortgage is useful to a Creditor whilst other prior Creditors have a Mortgage on the same Lands; but a subsequent Mortgagee may secure his own Debt, by paying off the prior Mortgagee, or by depositing the Money, in case he refuse to take it; which by our

Law is, by bringing it into a Court upon a Bill exhibited against the first Mortgagee; but by this Payment, the Debt of the subsequent Mortgagee is only secured against those Creditors whose Securities are subsequent, and not against others which are prior to the Security which he had taken. Dom. 1. Vol. 362.

Decreed also, that the Plaintiffs shall be admitted to redeem Browning's Mortgage notwithstanding the Decree to foreclose the Equity of Redemption; nevertheless the same shall be in Nature of a stated Account, and the Sum therein computed due for Principal and Interest, shall be from that Time taken

as a Principal Sum, and Interest should be computed for the same from that Time, &c.

Nicholas Phillips, *Plaintiff*.

1. Ch. Cas. 292.

2. Term. 11. Richard Phillips, &c. *Executor of Nicholas Phillips, deceased, Defendant.*

3. Ch. Cas. 292.

Bond conditioned to pay 1100*l.* given by one Partner to the other, on Account of the Partnership; the Obligee devised all his personal Estate and Debts due to him, equally to be divided between the Plaintiff and the Defendant, and made the Defendant Executor: decreed that by his being made Executor, this Debt was not discharged.

Nicholas Phillips deceased, being Uncle to the Plaintiff Nicholas Phillips, and possessed of a great personal Estate, and having no Child, took care to educate the Plaintiff, and brought him up with the Defendant his Partner, both living in the House with him; and by his Will gave them all his real Estate and Household Goods, and all his Shipping, or Parts of Shipping, and *all his Debts*, Goods in his Shop and Warehouse; and the Remainder of all his personal Estate equally to be divided, and made the Defendant *Richard Phillips* Executor, and in *July 1673*, he died.

The Plaintiff exhibited a Bill, to discover the Shipping and personal Estate, and to have his Dividend, and to be *exempted from a Debt* of 400*l.* which the Testator gave him; and wherewithall he was charged by the Executor, because he found it entered as a *Debt* in the Testator's Book.

The Defendant denied the 400*l.* to be a *Gift*, but a Debt, and demanded that the same may be brought into the Account; he demands also the Deduction of a Bond which he gave the Testator to pay 1100*l.* as due to him in the Partnership; and also a Debt of 2000*l.* and 120*l.* Interest thereof, being employed in Trade, and for which the Testator had no Security; and insists, that he being made *Executor, that is a Discharge in Law*, and those Debts are thereby no Part of the personal Estate of the Testator, and ought not to be let into the Account.

That after the Testator's Death, this Defendant by the Consent of the Plaintiff had the *Shipping* valued, and the same amounted to 1753*l.* and that the Plaintiff was present, and approved the Valuation in the *Inventory*, so that if any thing had been afterwards lost, the Plaintiff would have recover'd his Dividend according to that Value, and which the Defendant hath already tender'd.

That in *Sept. 1673*, the Defendant sold the said *Shipping* to one *Hen. Whiting*, and he conveyed the same back again for the same Consideration to the Defendant; therefore the Defendant ought to account but for that *Value*, and not for the growing Profits.

The Counfel for the Plaintiff infifted, that this was a colour-^{Fraudulent}able Valuation, and not at the full Value, and always difown-^{Valuation of}ed by the Plaintiff, who infifted to have his Share *in Specie* with the Product; and that the Account might be directed accordingly; and that tho' the Debts which the Executor did owe to the Testator might be difcharged in Law by making him *Executor*; yet it appears to be the Intention of the Testator, that they fhould not be difcharged, becaufe he *devifed all his Debts*, Goods in his Ship, &c. equally to be divided.

The Court was of Opinion, that the Debts which the Executor owed to the Testator were not difcharged, but ought to come into the Account.

That the Executor was not obliged to have the *Shipping* valued, efpecially fuch as was beyond Sea; and there being no Proof that the Plaintiff *agreed* to fuch *Valuation*, he is not concluded by it; but that the 400 l. which the Plaintiff demands as a Gift, is not fo, but a Debt, and ought to be brought into the Account with *Intereft*.

That the 1100 l. owing in Partnership fhall be answer'd to the Estate of the Testator, and the Plaintiff to have his Share thereof.

But no Account to be taken of the Goods or Wares in the Shop at the Time of the Testator's Death; and if any Debts fhall be difcovered after this Account taken, both the Plaintiff and Defendant fhall contribute to difcharge them.

William Watfon, *Executor of Thomafin Davis,*
Plaintiff.

Thomas Corbet, Richard Fowler, Rowland Baugh
Son and Heir of John Baugh, Defendant.

ONE Fox granted an Annuity of 20 l. per Ann. to the faid *Thomafin* for 21 Years, out of the Lands in the Bill mentioned, which was received by her for fome Time.

of which it was iffuing were granted to another, who got a Release of this Annuity from the Trustees: decreed, that notwithstanding the Release, and though the Term was expired, fo that the Arrears could not be recovered at Law; yet the Lands fhall ftill ftand charged.

Afterwards Fox granted thofe Lands to one *Fowler*, and the fame by feveral mean Conveyances came down to *Baugh*, who procured a *Release* from the Trustees of the faid *Annuity*; and a former Decree having been made in this Cause for the Payment of the faid *Annuity*; and it appearing that the feveral Purchafers had Notice thereof; and that *Fowler* who was the firft Purchafers had an Allowance made for the fame;

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And

And that *Baugh* had likewise Notice thereof, and ought not to have procured *such Release* where the Deed it self could not be produced, that being always kept by the said *Thomasin*, and not by her Trustees, she having the legal Interest; and that the Lands in the Bill ought to stand charged with the Arrears notwithstanding the said *Release*, and the *Term* of 21 *Years* now expired, so that it could not be recovered at Law.

And this was decreed accordingly, from the Time that it was first in Arrear to the Death of *Thomasin*, with full Costs.

William Page, *Esq*; and Bridget his Wife, Executrix of Peter Edwards, Executor of John Edwards, Son and Heir of John Edwards deceased, Plaintiff.

Matthias Ring and Mary Stubbs, Defendants.

John Edwards the Elder, Father of the Plaintiff *Bridget Page*, by his last Will devised to her a Legacy of 400*l.* and charged his real and personal Estate with the Payment thereof, and made *Bridget* his Wife, the Mother of the Plaintiff *Bridget*, Executrix, and died.

Bridget the Executrix afterwards married one *Stubbs*, and he and his Wife received the Profits 7 or 8 *Years* without paying the said Legacy, and then the Wife died, and *Stubbs* claims the Premises as an Interest devised to his said Wife.

Then *Stubbs* the Husband died, leaving a good Estate to *Katharine* and *Mary* his two Daughters, whom he made Executrices, and *Katharine* married the Defendant *Matthias Ring*, and they and the other Defendant *Mary* having sufficient Assets of the Estate of their late Father *Stubbs*, refuse to account with the Plaintiffs *Wm. Page* and *Bridget* his Wife, tho' they are intitled to demand it, the said *Bridget Page* being Legatee of the said 400*l.* and also Executrix of *Peter Edwards*, who was Executor to her Father *John Edwards* the Testator; and likewise to the Residue of the Estate of the said *John Edwards*, and all his Money in the Hands of the said *Stubbs*; and the rather because the Plaintiffs have, since the Death of *Peter Edwards*, paid all the Debts and other Legacies of the said *John Edwards*, out of their own proper Money.

Katharine Ring, one of the Daughters and Executrix of the said *Stubbs*, is since dead; and *Mary Stubbs* the other Daughter and Executrix, conceals the Profits and the Assets of the said *Stubbs*, pretending that he had a Judgment against *Peter Edwards*; and she hath sued out a *Sci' Fac'* in order to Execution.

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Therefore the Plaintiffs have exhibited their Bill, to have an Account of the mean Profits, &c. and after what shall appear to be due on the Judgment, deducted, (*if any Thing be due*) that the Overplus may be paid to them towards Satisfaction of the said Legacy of 400 l.

The Defendants pretend several Sums due to them, and that *Accounts between Peter Edwards and John Stubbs, were included in that Judgment*, given by him to *Stubbs*; and that what remained due to *Bridget* the Plaintiff, was paid by *Peter Edwards*, by the Conveyance of certain Lands to her, which they set forth in their Answer.

Decreed that the 400 l. shall be paid to the Plaintiffs, with Interest out of the personal Estate of *John Edwards* the Testator; and that so much of the Profits of the real Estate, as will supply the Defects of the personal Estate, be applyed for that Purpose, the Plaintiff *Bridget* being entitled to the said personal Estate as she is Executrix of *Peter Edwards*, the Executor of *John Edwards* her Father.

That an Account be taken thereof; and of what hath been received by *Stubbs*, and not paid over to *Peter Edwards*, the Defendants shall pay the same with Interest to the Plaintiffs, and likewise what Rents and Profits hath been received by the said *Stubbs* out of the real Estate, since the Death of *Peter Edwards*.

Not to ravel into any stated Account, but the Proceedings at Law on the Judgment to stay till the Report made, and then to be vacated on Record, if the Debts thereby secured, are satisfied by Discount of what shall be found due to the Plaintiffs.

Richard Simms, *Plaintiff*.

Thomas Barry *Son and Heir, and Executor of William Barry, Defendant*.

William Barry, the Father of the Defendant, entered into a Bond to the Wife of the Plaintiff *Simms* before her Marriage, to pay 400 l. whereof 120 l. had been already paid; and now the Plaintiff exhibited his Bill for the Payment of the remaining 280 l. and to have Relief on the said Bond which it happened to be penned, was a Bond in which the Obligor *Wm. Barry* was bound in *Quadráginta libris* when it should have been in *Quadráginta libris*. The Obligor borrowed 400 l. and gave Bond in Quadráginta libris decreed a Bond for 400 l.

It appearing to the Court, that 120 l. had been paid, and that there was such a Sum as 280 l. due, and the said Bond given as a Security for the Payment of 400 l.

It was decreed, that the said Bond should stand as a good Bond of the Penalty of 400*l.* for the Payment of the said 280*l.* and that the Defendant shall pay both the Principal and Interest, so far as he hath *Assets*; and that the *personal Estate* be first applied for that Purpose, and what falls short to be paid out of the *real Estate*.

And that this Bond take Place before any other Bond, on which Judgment hath not been obtained before this Term, and that on Payment of the Money, it shall be delivered up and cancelled.

The Lady Anne March, Widow and Executrix of Sir George March, Plaintiff.

Joyce Fowke, Widow, Thomas Wroth, Esq; and Dorothy his Wife, Henry Walker, Esq; and Sarah his Wife, Richard, John, Thomas, and Mary Fowke, Children of the said Joyce, and Sir Francis Pemberton and others, Trustees of the said Sir George March, Defendants.

Trustees decreed to execute their Trust by Sale of Lands to pay Debts, &c. and the personal Estate not to be subject to the Payment thereof.

SIR George March being seised in Fee of the Lands in the Bill mentioned, did by his Bill dated 27 March 1672, devise the same to the Plaintiff Anne his Wife for 80 Years, if she should so long live; and afterwards to Sir Fran. Pemberton, and other his Trustees for 99 Years in Trust, that by the Perception of the Profits, or by the Sale of the said Estate, they might pay his Debts; and afterwards to Richard Fowke, and the Heirs Males of his Body, Remainder over, &c.

And he devised to the Plaintiff the Lady Anne Marshall, all his Plaintations in *Nevis*, and his *Negroes*, Servants, Goods, Stock, and all his *personal Estate whatsoever to her own Use* having charged his real Estate for the Payment of his Debts, that his *personal Estate* might come clear to her; and made her sole Executrix, and died.

The Testator was indebted to several Persons, amounting in all to 994*l.* and by a Deed in July 1656, he had covenanted to pay to the Children of Joyce Fowke 1000*l.* within a Year after the Decease of his Father Rich. Marshall, if the said Richard did not pay the same in his Life-time.

And now the Plaintiff, the Lady Anne Marshall, exhibits this Bill, to enforce the Trustees to sell the Lands, or so much thereof as will be sufficient to raise Money for Payment of the Debts; or that if the said Lady (the Plaintiff) should be compelled to pay them out of the personal Estate, then that the Lands may be conveyed to her to reimburse her.

The Defendants set forth several Deeds, by which the Testator obliged himself to pay several Sums therein mentioned to them and their Children, and insist by their Counsel, that the *personal Estate ought in the first Place to stand charged*, and not the *real* till the personal shall be not sufficient; and that some of them claim Part of the real Estate by Virtue of those Deeds; and that the Debts are still owing with Interest; and the Trustees submit to do as the Court shall direct being indemnified.

The Court decreed the Trustees to execute the Trust by Sale of the Lands appointed to be sold to pay the Testator's Debts, and the Money due to the Children of *Joyce Fowke* with Damages; and to pay the Widow *Dame Anne Marshall* so much Money, as the yearly Value of the Lands sold shall amount unto, after the rate of 7 Years Purchase for *her Estate for Life*, in such Part of the Lands which shall be sold for the Purpose aforesaid.

Sir John Tufton, Bar. Plaintiff.

John Hawtry, Esq; Defendant.

THE Bill was, to supply a Defect in a Settlement of Lands on the Plaintiff, the better to enable him to pay his Debts.

This Cause coming on upon Bill and Answer, the Court would make no Order without a Replication and Proofs.

Mary Stubbs, the Widow of Richard Stubbs, and Edward Huene, Executors of the said Richard, Plaintiffs.

Rich. Stubbs and Charles Stubbs, Sons of the said Richard deceased, Defendants.

Richard Stubbs the Father, being seised in Fee of the Lands in the Bill, did, by his last Will in the Year 1675, appoint that his Debts should be paid out of his Estate; and afterwards he devised one Moiety thereof to the Plaintiff *Mary* his Wife, and the Plate marked with her Name; and the other Moiety

Devise of his real and personal Estate to pay his Debts, the personal Estate fell short: decreed that the Heir at Law shall join with the Executors in the Sale of the real Estate, and that the Widow of the Testator shall not retain her Jewels as *Paraphernalia*.

to his Children *Richard, Charles, John* and *Elizabeth*, and all his *Plate* to be equally divided amongst them; and declared, that all his *Estate both real and personal* should be for the Uses aforesaid, and made the Plaintiffs his Executors, and died.

The Executors have paid several Debts, and were about to pay the rest by Sale of some Part of the Lands, having not sufficient of the *personal Estate*, and to make Distribution as the Will directs.

But *Richard Stubbs* the Defendant, the Heir at Law of the Testator, pretends that the Lands are descended to him, and that his Father made no such Will, and refuses to join in the Sale; and the Executors pray an Account of the Profits, and of a *Cargo of Goods* of the said Testator sent into *France*, amounting to 500*l.* to have Returns, which the Defendants now refuse, pretending the said Goods were given to them by their Father in his Life-time.

The Court decreed an Account of the *personal Estate*, whereof the *Jewels* claimed by *Mary* as her *Paraphernalia* shall be Part; that *Richard* the Heir join in Sale, and the Purchaser to hold against him, and all claiming under him.

As to the Cargo of Goods, they are to be charged as Part of the *personal Estate*, and applyed accordingly.

Elizabeth March, Widow and Executrix of Richard March deceased, Plaintiff.

William Walker, Defendant.

THE Defendant was a *Goldsmith*, and had several Sums of Money in his Hands of the said *Richard March*, who was drowned 20 *Febr.* 1672, and the Defendant having Notice thereof under Pretence of going to see the Body, went into his Chamber, and entered his Closet in *Fleetstreet*, and took away several Writings and Securities for Money, and hath since made several Entries and Additions, and Alterations, both in his *Day-Book* and *Leiger-Book*, relating to the Accounts of the deceased, of which the Bill prays a Discovery and Relief.

The Defendant confessed, that he had several Sums of Money of *Rich. March*, 9 *July* 1672, at which Time he accounted with the said *Richard*, who, by his Hand set to the Defendant's Book, acquitted and discharged him of all Accounts to that Day; that afterwards the Defendant did receive other Sums of the said *Richard*, amounting to 400*l.* and paid him 200*l.* and 100*l.* more, and 86*l.* but 2 Days before the said *Richard* was drowned; so that there

remained due to him at his Death only 24 *l.* that the Day after his Death, this Defendant (at the Request of *Mr. Thynn*, (whose Steward the said *Richard* was,) went to his Chamber and Closet to look over his Papers, and to separate those which belonged to *Mr. Thynn* from the rest; but denied that he took away any Writings.

The Court on viewing the Books of Account, and examining one *Cook viva voce*, who was the *Goldsmith's Apprentice* at that Time, and who had been already examined as a Witness both on the Part of the Plaintiff and Defendant; and he now deposing, that two Entries were made in the *Leiger-Book* of 100 *l.* each, as paid by the Defendant to *Richard Marsh* 18 Feb. were not entered till after his Death; and that about two Days before his Death he, the said *Marsh*, was at the Defendant's Shop to call for Money, and that he was in some Care to provide Money to pay him, which he acknowledged was 200 *l.* the Court was satisfied that the said 200 *l.* was never paid, decreed the Payment thereof, and of the 24 *l.* and Interest at the Time of the Bill exhibited, at such Time and Place as the Master shall appoint.

Richard Morrice, *Plaintiff.*

Frances Hollibarton, *Widow*, Elias Pledger and Elizabeth his Wife, *Administratrix* of John Burges, *Defendants.*

THE Plaintiff *Richard Morrice* sold several Goods for *John Burges*, amounting in the whole to 100 *l.* which said Sum *Burges* desired him to keep in his Hands at Interest, and to give Bond for it to *Hollibarton* in Trust for him; which he did accordingly. Bill to be relieved against a Bond and Judgment obtained at Law.

Afterwards the Plaintiff paid *Burges* 20 *l.* whereof 10 *l.* was Part of the *Principal*, and soon after *Burges* died Intestate; and *Elizabeth* his Wife, now the Wife of the Defendant *Elias Pledger*, took out *Administration*, to whom the Plaintiff paid 70 *l.* more at several Times, which she promised should be allowed out of the Bond; but now she pretends, that this 100 *l.* was left in the Plaintiff's Hands by her Husband the Intestate, to be employed in Trade; and confesses, that the Plaintiff paid several Sums to the said Intestate in his Lifetime, and to her, as *Administratrix*, since his Decease, amounting to 58 *l.* as the Proceed of the said 100 *l.* in Trade, and

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not as any Part of the principal Sum of 100 *l.* and Interest; and pretends likewise, that since those several Payments the Plaintiff promised to pay the said 100 *l.* and thereupon he put the said Bond in Suit, and hath obtained a Judgment, &c.

The Court decreed the 100 *l.* shall be taken as Money lent at Interest; and that the Plaintiff should pay what remained unpaid, together with the Interest thereof, and *Costs* at Law, to the Defendant; and then the Bond to be delivered up, and Satisfaction acknowledged upon the Judgment, the Plaintiff giving a Release of Errors, and on his Failing so to do, the Bill to be dismissed.

Rowe, *Plaintiff.*

Harvey, *Defendant.*

THIS Bill was, to have the Will of Sir *John Hele* performed, who gave an Annuity of 6 *l.* 13 *s.* 4 *d.* *per Annum* to the *Curacy*, which was now served by the Plaintiff; but, that if a better Maintenance should be settled on him than he had at that Time, then the said Annuity was to cease.

* See *Kennett's Case* of *Impropriations* f. 253.

The said Annuity was to be paid out of the Demesnes of *Clifton Manor in Dorsetshire*, which by several mean Conveyances was now come to the Defendant, who in his Answer set forth the * Letter and Declaration of King *Car. 2.* in the Year 1660, to the *Bishops, Deans and Prebends*, to settle some good Addition and Increase on Vicarages and Curacies, &c. where the Tithes were appropriated to the said *Bishops, &c.* and that no Lease should be made of any Rectories impropriate, until they should provide, that the Curates Places unendowed should be of the Value of 100 *l.* or at least 80 *l.* *per Annum*; and that by Virtue thereof the Plaintiff hath or might have a more sufficient Maintenance, if he had made Application for that Purpose.

But it appearing, that a more sufficient Maintenance was not settled, the Court decreed the Arrears of the said Annuity to be paid forthwith to the Plaintiff; and that the Defendant, his Heirs and Assigns, shall at all Times hereafter continue the Payment of the said Annuity, until a better Maintenance shall be settled according to the aforesaid Will.

Thomas Norris, *Plaintiff.*

William Norris, *Defendant.*

T *Thomas Norris* the Father had Issue two Sons, *Richard* and *Thomas* the Plaintiff, and he the said *Thomas Norris* the Father, by his last Will, devised to his eldest Son *Richard* the Sum of 100 *l.* which was then secured on a Mortgage to him, and made the Defendant *William Norris* Executor, and soon after died.

Two Brothers; a Legacy was devised to one of them, who went beyond Sea, and after

five Years Absence, the other suggesting he was dead, took out Administration, and sued for the Legacy, and had a Decree.

Thomas the Plaintiff exhibited a Bill against the said Executor for this 100 *l.* suggesting, that *Richard* his Brother was dead, and that he had administered, and so was intitled to the Money.

The Defendant the Executor confessed the Will and the Devise; but says, that the 100 *l.* was not to be paid till *Richard* was of the Age of 18 Years; and that he (the Defendant) took Care of the Maintenance of *Richard*, and of his Education, and placed him out Apprentice; and that about five Years since, he went beyond Sea, leaving a Note in Writing behind him, that he would not return in seven Years, and believes that he is still living; and says, that the Interest due on the said Mortgage was paid to the Testator himself, as long as he lived; and that he is willing to pay the Money, being saved harmless in so doing, and being allowed his Expences, &c.

The Court decreed the 100 *l.* and Interest, to be paid to the Plaintiff ever since *Richard* went away, the Plaintiff giving Security that it shall be repaid to *Richard*, if ever he should return; which Security is to stand for 3 Years, and no longer; but the Plaintiff's own Security to stand for ever.

Termino Paschæ,

31 Car. 2. Anno 1679.

Nicholas Wallenger, *Plaintiff.*

William Greenfeild, Thomas Norris *and* Elizabeth
his Wife, Defendants.

An Agree-
ment de-
creed to be
performed.

THE Duke of Somerset in December 1672, devised to the Defendant *Greenfeild* a Messuage and Land, then in the Possession of the other Defendants *Thomas Norris* and his Wife, to hold the same from the Day of the Date of the said Demise for 99 Years, if *John Greenfeild*, Nephew of the said *William*, and *Stephen Coleman* and *Henry Coleman* should so long live, under the yearly Rent of 3 *l.* 9 *s.* 2 *d.*

Afterwards on the 29th of September 1673, it was agreed in Writing between the Plaintiff *Wallenger* and the Defendant *William Greenfeild*, that in Consideration of 787 *l.* formerly paid, and of 463 *l.* more, to be paid with Interest by the said Plaintiff to the Defendant *Greenfeild*, that he would, before the 25th of March next ensuing (at the Charge of the Plaintiff) assign to him all his the said *Greenfeild's* Estate and Interest in the Premises, with Covenants for quiet Enjoyment, &c. he, the said Plaintiff, procuring a License from the Duke for making such Assignment, and demising the Premises to the Defendant *Elizabeth* for her Life, (she being then a Widow, but since married to the Defendant *Thomas Norris*;) at 100 *l.* per Annum Rent; or else paying to the said *Elizabeth* 20 *l.* per Annum for her Life at her Election; and that the Rent of 100 *l.* which would be due at Lady-day next, should be paid to the Plaintiff, if the said *Elizabeth* made her Election to have 20 *l.* per Annum.

Pursuant to this Agreement, the Plaintiff paid the said *Greenfeild* several Sums of Money, amounting to 258 *l.* in Part of the Purchase-Money; and is ready to pay the Residue with Interest; and the Defendant *Elizabeth* hath made her Election

to

to hold the Premises at the yearly Rent of 100 *l. per Ann.* and attorned Tenant to the Plaintiff, and paid him some Part of the Rent for the Year 1673, and more for two Years afterwards; and that the *Duke of Somerset*, to evidence his Consent to the said Assignment and Lease, had, in Consideration of 20 *l.* paid to him by the Plaintiff by Indenture dated in *March* 1674, demised the Premises to the Plaintiff and his Assigns for 99 Years, if those three Lives aforesaid, or either of them, should so long live under the yearly Quit-rent, the same being as effectual for Enabling the Performance of the Agreement between the Plaintiff and the Defendant *Greenfeild* as a *License* would have been.

And the Plaintiff hath requested *William Greenfeild* to accept the Residue of the Purchase-Money, and to deliver up his Lease, and likewise to release all his Right and Interest to the Premises; and hath likewise required the Defendant *Norris* to pay all his Rent arrear, and either to take a Lease according to the Terms in the said Agreement, or to deliver up the Possession to the Plaintiff, which the Defendants refuse; and *Greenfeild* refuses to discover what Money he hath received of the Plaintiff; and the other Defendants have committed Waste, and the Plaintiff hath no Remedy to recover the Rent so long as *Greenfeild's Lease* stands in Force; therefore the Plaintiff exhibited this Bill to be relieved in the Premises.

The Defendants pretend, that all the Purchase-Money was not paid, nor a *License* procured according to the Agreement; and that he the said *William Greenfeild* is willing to pay back as much of the Money as he hath received.

The Court decreed, that the said Agreement shall be performed, and that the Plaintiff pay *Greenfeild* the Residue of the Purchase-Money, with Interest for what remains unpaid; and then *Greenfeild* to convey to the Plaintiff, who is to hold the Premises from all claiming under him.

That *Norris* and his Wife pay the *Arrears of the 100 l. per Annum Rent*, and continue the growing Payments to the Plaintiff, and to take a Lease of the Premises, according to the Terms in the Articles of Agreement, and to execute a Counterpart thereof, no Costs of either Side.

Term.

Term. Sanct. Trin.

31 Car. 2. Anno 1679.

Thomas Powell, *Esq*; Plaintiff.

Thomas Stakes and Jane his Wife, and others,
Defendants.

Legatee is
to accept
and abate
in Proportion with
the other Legatees,

Sampson Wise by his last Will devised to Dorothy Oglethorpe 500 *l.* and made Philippa Langhorn Executrix, and died.

where the Estate of the Testator falls short to pay the whole.

Dorothy Oglethorpe, before she received the said 500 *l.* gave 40 *l.* Part thereof to the said Philippa, who being indebted to the Plaintiff Powell in 100 *l.* Principal Money, upon Bond, she, together with one Rowland Langhorn her Brother in Law, and one Essex Merrick, who had the Management of her Estate in Trust to pay her Debts, came to the Agreement following with the Plaintiff about September 1671.

ff. That whereas the said Essex Merrick had an Estate conveyed to him, in Trust to pay the Debts and Legacies of the Testator Sampson Wise, he should out of the 500 *l.* devised to Dorothy Oglethorpe, detain 40 *l.* Legacy given to Philippa, and pay it to the Plaintiff Powell in Part of 100 *l.* aforesaid; and that Rowland Langborne, who was to receive a considerable Sum for Philippa, should with her be bound to the Plaintiff Powell in a Bond of 120 *l.* conditioned to pay 60 *l.* Residue of the said 100 *l.* at a Day certain; which new Bond should be deposited in Merrick's Hands, in Trust, that upon his Payment of the 40 *l.* to the Plaintiff, he should deliver up the new Bond to him, and that then the Plaintiff should deliver up the old Bond of 100 *l.* to be cancelled; but before this Agreement was performed Philippa died, having made one John Langhorn an Infant Executor.

Afterwards *Merrick* in Breach of his Trust delivered up the new Bond to *Rowland Langborne*, and refused to pay the 40 *l.* according to the Agreement; whereupon the Plaintiff exhibited a Bill against the said *Rowland* and *Merrick*, and the Infant the Executor of *Philippa*, and other the Trustees for Payment of the Debts of *Philippa*, setting forth all this Matter, and praying Relief, &c.

And upon hearing this Cause it was decreed, that the Plaintiff *Powell* procuring a Release of the said 40 *l.* from *Jane* (the Executrix of *Dorothy*) who married the Defendant *Stakes*, that then *Merrick* should pay the said 40 *l.* to the Plaintiff *Powell*. Executor decreed to sign a Release.

But *Stakes* and his Wife refuse to execute such Release, tho' often required; and the Plaintiff hath offered them, that if *Oglethorp's* Estate fall short to satisfy her Debts and Legacies, he will allow his Proportion of the said 40 *l.* to make it good.

Therefore the Plaintiff hath exhibited this Bill, to compel them to execute such Release, and that he may be relieved.

The Defendants deny that they know any Thing of the aforesaid Agreement, or that *Philippa* was indebted to the Plaintiff, or that such new Bond was given in Trust, &c. and left in the Hands of *Merrick*.

But they confess the Devise of 500 *l.* and 40 *l.* as in the Bill set forth; and say, that *Merrick* gave them some Bills charged on Sir *Robert Viner* for 480 *l.* which the said *Jane* the Executrix of *Oglethorp* accepted, and that he detained 20 *l.* in his Hands for his Trouble in the said Trust; but because of the Stop soon after in the *Exchequer*, the Defendants have not received any Part of the said principal Sum of 500 *l.* and they demand the Judgment of the Court, whether the same shall be recovered as *Assets* in their Hands; and they insist by their Counsel, that they are not obliged to seal such Release, because they are no Parties to the original Suit; and for that *John Langborne*, the Executor of *Philippa*, is still an Infant, and not capable to give them a legal Discharge for the said 40 *l.* and for that the Estate of *Oglethorp* falls short to pay her Debts and Legacies.

That if the Plaintiff *Powel* hath any Right to the said 40 *l.* he ought to accept the same in Proportion with the other Legacies of the said *Oglethorp*, and abate in Proportion as her Estate shall fall short.

Thereupon the Counsel for the Plaintiff offered, that he should accept two Thirds of the said 40 *l.* for his Proportion, so as *Stakes* and his Wife would execute a Release thereof to *Merrick*,

Merrick, and deliver the same to the Plaintiff, the better to enable him to recover it of *Merrick*.

Whereupon the Court decreed the said *Release* to be executed and delivered accordingly; and at the same Time, that the Plaintiff *Powell* should give his own Security to the Defendants, to pay the one third Part of the said 40 *l.* as soon as he should recover it of *Merrick*, which third Part the Plaintiff shall pay to *Stakes* and his Wife, and the other two Thirds the Plaintiff is to retain for his Proportion of the said Legacy given to the aforesaid *Philippa*.

Term. Sanct. Mich.

31 Car 2. Anno 1679.

Nicholas Saunders, *Plaintiff*.

Richard Bournford, Isabel Allen *and others*,
Defendants.

A Trust of
a Term for
Years was
supported
in Equity,
tho' the

Term was merged in the Inheritance.

JOHN *Allen* being seised in Fee, &c. did, by Indenture dated 25 April 10 Jac. grant the Lands in the Bill, &c. to *Richard Saunders*; and in the said Deed there was a Covenant for farther Assurance.

This Grant being only of a Term for one thousand Years, *Richard Saunders*, upon the Marriage of his Son *John* with one *Anne Andrews*, assigned the Residue of the said Term to his Son *John*, who quietly enjoyed the same for thirty-five Years.

John Saunders on the 20th of August 1662, assigned the Remainder of the Term to *Thomas Harris* and * *John Allen* the Grandson of the first Lessor, in Trust for the Benefit of his Wife

* By this Assignment a Moiety of the Term was merged in the Inheritance, for that *John Allen* was Grandson and Heir at Law to *John Allen* the Grantor.

and Children; and the Trustees accepted the said Trust, and declared it to be for *Anne* the Wife of *John Saunders*, and for the Education and for raising Portions for her younger Children; and after her Decease, in Trust for *Edward* her eldest Son; and that on Request they would assign the same to him; and the Premises were enjoyed accordingly.

Edward, in the Year 1668, devised the Residue of the said Term to *Margaret* his Wife, who, on 23 July 19 Car. 2. sold it to the Plaintiff *Nicholas Saunders* for a valuable Consideration; and *Thomas Harris*, who was the surviving Trustee of *John Saunders*, and the Children of the said *John*, all joined in said Sale; and the Plaintiff enjoyed the Premises quietly for many Years.

Afterwards the Defendant *Isabella Allen* claimed a Title as Heir at Law to *John Allen* the original Lessor, (*viz.*) as Daughter and Heir to *Thomas Allen*, who was Son and Heir of *John Allen*, who was Son and Heir of the said *John* who granted the original Lease; and the other Defendant *Richard Bourn* claimed as *Administrator de Bonis non*, &c. of the said *Thomas Allen* and *John Allen* his Son.

The Title of the said *Isabella* was, that a Moiety of the said Term was merged in the Inheritance; for that *John Saunders*, 20 August 1662, assigned the whole to *Thomas Harris* and *John Allen*, who was then Heir at Law to the Reversion in Fee, and Grandfather of the said *Isabella*; so that a Moiety of the said Term was merged in him, and his Granddaughter *Isabella* hath recovered the said Moiety in Ejectment, and hath now Possession thereof; for which Reason the Plaintiff hath exhibited his Bill against the Defendants to have one Moiety of the Term confirmed to him, which is now claimed by the *Administrator de bonis non*, &c. and that *Isabella* may make a new Grant of the other Moiety, which was merged as aforesaid.

The Court decreed, that the Plaintiff should hold the Premises, during the Remainder of the Term, notwithstanding the Merger of the Moiety; and that the Defendant *Isabella* make a farther Assurance of the Remainder of the said Term, &c.

John Cock, *Plaintiff*.

John Arnold *and others, Defendants*.

Statute of
Maintenance plead-
ed; the
Plaintiff re-
plied, and
Defendant
demurred,
for that the

BILL is, to have the Execution of Articles made between the Plaintiff and the Defendant concerning a Purchase of a Manor, &c. Part of the Purchase-Money being paid; and the Defendants being in Possession refuse to convey, and yet sue the Plaintiff at Law for the Residue of the Money.

Replication was a Departure from the Bill; but the Demurrer was over-ruled.

* 32 H. 8.
cap. 9.

The Defendants plead the * *Statute of Maintenance*, and that the Articles thereby are void; because neither they or the Plaintiff, nor any under whom the Defendants claim, were in Possession of the Premises, or of the Reversion or Remainder thereof, or received the Rents and Profits thereof, by the Space of one Year next, before the Time of making the said Articles.

The Plaintiff replied, that the Defendants, or some of them, or some other Person under whom they claim, or *some other Person by their Consent or Agreement*, or to the Use of the said Defendants, or the Plaintiff, or some or one of them, was or were in Possession of the Premises, or the Reversion or Remainder thereof, or of some other sufficient Estate, or had taken the Rents and Profits thereof, by the Space of one Year, before the making the said Articles.

The Defendant demurs, for that the Replication is a Departure from the Matter in the Bill, in saying *some other Person to the Use of the Defendant*, or the Plaintiff by their Consent was or were in Possession of the Manor and Premises, and took the Rents, &c. for one whole Year before the making the said Articles; which, as the Defendants Counsel alledged, exceeded the Charge in the Bill.

But the Court was of Opinion that the Replication was good and pertinent to the Charge, and over-ruled the Demurrer.

John Culpepper, *Son and Heir of John Culpepper, Esq; Plaintiff.*

Thomas Wigg, John Wigg, George Parke and William Rawlinson, *Defendants.*

F*Francis Culpepper*, Uncle of the Plaintiff, in Consideration of 60 *l.* paid to him by the Plaintiff's Father; and of *natural Love and Affection*, covenanted to stand seised of a Messuage called the *Swan* in the Parish of *St. Mary Woolchurch*, to certain Uses in the Deed mentioned, Remainder to the Father of the Plaintiff and the *Heirs Males of his Body*, Remainder to the right Heirs of the said *Francis*, with Power to make Leases for 21 *Years*; who, according to that Power by him reserved, did afterwards demise the Premises to *Capell* and *Brigg* for twenty Years, at and under the yearly Rent of 50 *l.*

In the Year 1666 the said House was burnt, and *Capell* being dead, the Remainder of the said Term survived to *Brigg*, and in April 1668 the said *Francis Culpepper* married *Mary Wigg*, and devised the Premises to his said Wife *Mary* in Fee, and about a Year after he died.

In the Year 1669 *Brigg*, the surviving Lessee, with the Consent of the said *Mary*, assigned his Interest to the Defendant *Rawlinson*; and the said *Mary* agreed in Writing to add 40 *Years* to his former Term, in Respect of his rebuilding the said House, reserving only 12 *l. per Annum*, subject to a Decree of the Court of Judicature; which was afterwards obtained by the said *Rawlinson*, against which the Plaintiff exhibited his Petition, and likewise brought an Action, but prevailed in neither.

The Plaintiff now exhibited his Bill to discover the Title of the Defendant, who pleaded the *Decree* and the Proceedings in the Court of Judicature, and that the Plaintiff was privy to those Proceedings;

And demurred, for that the Plaintiff is barred by the several Acts of Parliament made for *Rebuilding the City of London*; and that if he is not barred he hath a proper Remedy at Law as any other Reversioner hath, the Privy being made and continued by Act in Law.

It was insisted by the Counsel for the Plaintiff, that he hath no Remedy for the Rent reserved, nor the Reversion after the said Term, without the Aid of this Court.

But the Court over-ruled both the Plea and Demurrer, and ordered an Answer in chief.

Thomas Jennings, William Speake, *Esq;* and William Hilliard, *by the said Jennings and Speake his Guardians, Plaintiffs.*

Ferdinando Gorges and James Hely, *Defendants.*

Joint Executors in Trust for an Infant; one of them broke his Trust in sealing a Release, by which the Infant lost 600 *l.* Decreed, that the Release should be set aside, and that the 600 *l.* should be made good to the Estate of the Infant, either by him to whom the Release was given, or by the Trustee.

William Hilliard, the Infant's Father, being in his Lifetime seised in Fee of a *Plantation in Barbadoes* of the yearly Value of 1000 *l.* did, by Articles dated in *January* 1667, agree to convey all his Estate and Interest in the said Plantation, called *Henley Plantation*, to the Defendant Gorges and his Heirs; and Gorges agreed to seal a general Release to the said Hilliard, and to his Executors, Administrators, &c. and that he the said Gorges would likewise seal 7 Bonds, each of them in the Penalty of 600 *l.* to pay 300 *l.* yearly to the said Hilliard for 7 Years, &c. and it was agreed, that if the Plaintiff, his Son, should die without Issue, then his Estate at Sea and in the County of *Somerset*, should go to the Issue of the Body of his Sister *Meliora*, the Wife of the Defendant Gorges; reserving to himself a Power to charge it with 3000 *l.* &c. and each of them bound himself in a Bond of 5000 *l.* for Performance of Covenants.

In *January* 1668, *William Hilliard* made his Will, and devised his personal Estate to the Infant (the Plaintiff) his Son, and made the Plaintiffs and one *Hely* joint Executors, in Trust for the said Infant, desiring them to dispose thereof to his best Advantage, during his Minority; and in Performance of the said Articles on his Part, devised all his Lands to his said Sister, &c. according to the said Articles, and would have executed a Conveyance of the Plantation, but Gorges delayed to prepare it, that he might have some Colour to defer the Sealing of the said 7 Bonds; and soon after the said *William Hilliard* died.

The Plaintiffs, *Speake* and *Jennings* the Executors, proved the Will, and soon after they desired Gorges to perform the said Articles on his Part, and to seal the 7 Bonds, which he refused; pretending the Articles were void upon the Death of the said *William Hilliard*.

Afterwards *Hely*, one of the Executors, in Breach of his Trust came to an Agreement with Gorges, and gave him a general Release, and accepted 5 Bonds to pay 300 *l.* *per Annum* for five Years, by which the Infant would lose 600 *l.* the Articles being made void by the said Release; and therefore the Plaintiff exhibited this Bill to have the first Agreement performed, and the Release

Release set aside, and that *Hely* might be discharged of the Trust.

The Court was of Opinion, that *Hely* had broke his Trust and that *Gorges* ought not to have any Benefit by that Agreement and *Release*, it being so much to the Prejudice of the Infant; therefore it was decreed, that *Gorges* execute the first Agreement, and pay the respective Sums thereby due, and Interest from the Times the same ought to have been paid; and if he fail in so doing, then *Hely* shall stand charged to pay it to the Plaintiffs to the Use of the Infant; that the 7 Bonds when executed, shall be brought into Court, there to remain till the Money and all the Interest be paid, and *Gorges* to be allowed what he hath paid to the Testator *Hilliard*; and that upon his performing this Decree, he shall hold the said *Plantation* to him and his Heirs against the said *Infant*, and he, when of Age, to make farther Assurance, &c.

Dr. Nicholas Butler and Jane his Wife, Plaintiffs.

Edmund Harrison, Jane Harrison and Thomas Lamb, Defendants; & econtra.

DR. Butler, before Marriage with the Plaintiff *Jane*, agreed that the 700*l.* Portion he had with her, should be at her own Disposol, and that he would settle 500*l.* more in Trust for her Use, and all other his real and personal Estate upon her and her Issue.

A Freeman of London agreed to settle his Wife's Portion and his own Estate on her and

her Children; her Father refused to pay the Portion, because he had another Wife then living, who by the Custom would have a Share of his Estate; decreed, that his Estate shall be so settled, that his first Wife have no Benefit thereof.

Edmund Harrison, having this 700*l.* in his Hands, gave a Bond in the Penalty of 1400*l.* to the Defendant *Thomas Lamb*, in Trust to pay 700*l.* and Interest to *Jane*, as she should from Time to Time direct, which afterwards the said *Edmund* refused to pay; and thereupon the Plaintiffs exhibited a Bill to have the Trust performed.

The Counsel for the Defendant insisted, that the Dr. had another Wife then living; and that the 700*l.* was put in *Edmund Harrison's* Hands, to prevent her Claim by the Custom of *London*, the Dr. being a Freeman of that City, and that the same was to be a Provision for *Jane* and her Children; besides

fides the *Dr.* had obliged himself to settle all his real and personal Estate upon them, which he had not done; and therefore the Defendants had exhibited a cross Bill against him, to have such Settlement executed.

But it appearing, that the *Dr.* had settled on Trustees to the Value of 1700 *l.* in full Performance of the *Articles*, it was decreed, that the 700 *l.* and the 500 *l.* and all other the personal Estate of the *Dr.* shall be paid to the Master, to be by him put out and secured on other Lands for the Benefit of the Plaintiff *Jane* and her Issue, so that neither the *Dr.* or the said *Jane* shall have Power to dispose thereof; but that the Interest shall be paid to the *Dr.* during the *Coverture* between him and *Jane*; and that if there should be Occasion of Portions or putting out their Children Apprentices, the Court upon Application will give Direction therein;

That if *Jane* and her Issue should die living the *Dr.* that then the Defendants shall not be admitted to administer to all or any Part of the said Estate, but that the *Dr.* shall dispose thereof, as if no Settlement had been made.

That the *Dr.*'s Estate shall be settled, so as his first Wife shall have no Benefit thereof by the *Custom of London*, &c. the Defendants to have moderate *Costs* to be allowed out of the Interest-Money belonging to *Jane* in *Edmund's* Hands.

George and Richard Johnson, *Brothers and Administrators* to Elizabeth Doegood, *Plaintiffs*.

The East-India Company, and Mary Chester *Administratrix* to Thomas Chester, and Phillis Chester *Administratrix de Bonis non* of Thomas Chester, *Defendants*.

Sale of East-India Stock by a wrongful Administrator, the Purchaser having Notice of the Fraud: decreed to be transferred back to the rightful Administrator, and that the Administratrix of the Purchaser shall account.

THE Plaintiffs, as Brothers and Administrators of *Elizabeth Doegood*, Wife of *Robert Doegood*, who brought to her said Husband in Marriage 150 *l.* Stock in the *East-India Company*, which was never altered in her Life-time, nor by him, as Administrator to her, after her Death; and he being now dead, *Ralph* his Son fraudulently pretended himself to be the Son of the said *Robert* and *Elizabeth*, (who in Truth was the Son of *Robert*, but by a former *Venter*) and by that Fraud and a false

Oath had obtained Letters of Administration to the said *Elizabeth*, and thereupon was admitted to the said Stock; and afterwards by Collusion sold it to *Thomas Chester*, to whom he transferred the same, and an Entry thereof made in the *Company's Books* accordingly.

The said *Thomas Chester* was privy to this Fraud, and at the same Time had Notice of the Plaintiffs Title, which was by Virtue of an *Administration* granted to them upon an Appeal, by which the *Administration to Ralph* was repealed and avoided *ab initio*; and this appearing in Proof to the Court,

It was decreed, that the Assignment of this Stock to *Thomas Chester* should be set aside, and that the *East-India Company* do, upon Application made to them, according to their Custom transfer back the said 150 *l.* Stock to the Plaintiffs, or their Assigns, to enjoy the same as fully as if the said *Elizabeth Deegood* might do, if she had been living; and that the said *Mary Chester* shall account for the Dividend, which her Intestate, *Thomas Chester*, hath received, so far as she hath Assets; and this *Nisi Causa*, &c. at the Return of a *Subpœna* to be served on her; she first paying 5 Marks Costs to the Plaintiffs for this Day's Attendance.

Francis Chandler, *Plaintiff*.

James Dorsett, *Defendant*.

THE Plaintiff and the Defendant were Partners in the Trade of a *Shipwright*, and about a Year after the Partnership began, the Plaintiff, suspecting some unfair Dealings, desired to break of the Partnership, and called for an Account, which being hastily made by the Defendant, wherein the Plaintiff was made Debtor 160 *l.* for which he gave a Note under his Hand to the Defendant, who, at the same Time, promised to rectify any Error or Mistake in the Account, and now the Plaintiff alledging and setting forth several Mistakes, desires that the Defendant may come to a new Account, or rectify the Mistakes of the former.

After an Account stated; and a Note given for the Balance, and Judgment obtained on that Note, a new Account was directed, tho' all the said

Matter was pleaded in Bar to it.

The Defendant pleads the former Account stated, and the Note under the Hand of the Plaintiff for 160 *l.* and avers his Plea to be true, and a full and final Account to that Day.

And

And by his Answer he sets forth a Verdict obtained in an Action brought against the now Plaintiff for 160 l. and Costs, and denies any Promise to rectify Mistakes in that Account.

The Counsel for the Plaintiff at the Hearing insisted, that the Plea was ill, because the Account pleaded was so general, that no Errors or Mistakes could be assigned, that there was not any thing mentioned of the particular Payments or Disbursements, or how the Materials in the Partnership were disposed, &c.

But the Court decreed, that the Defendant should come to a new Account concerning their Stock and Trade in the said Copartnership, and for their Payments and Receipts, and that each of them produce their Books of Account on Oath, and what shall appear to be due, shall be paid with Interest at the Time and Place the Master shall appoint.

Mary, Margaret and Elizabeth Dormer, by J. B.
their Guardian, Plaintiffs.

William Dormer, John Webb and George Weedon, *Executors of Charles Dormer, the Father of the said Infants, Defendants.*

Executors shall be intended Trustees, tho' not named as such, and shall accept the Trust. Where no Time is appointed for the Payment of

Charles Dormer, the Father, being possessed of a personal Estate of great Value, and of a real Estate in *Buckinghamshire* of the yearly Value of 800 l. and of an Estate in *Hampshire* and *Sussex*, formerly the *Bannisters*, of 600 l. per Annum, and residing himself on his Estate in *Buckinghamshire*; but *Idsworth* in *Hampshire*, being the ancient Seat of the Family, he usually comprehended his whole Estate, as well in *Hampshire* as in *Sussex* under that Name.

Childrens Portions, they shall be paid at the Age of 21 or Day of Marriage.

The said *Charles Dormer*, by his Will dated 7 March 1677, devised as followeth; *ff. As to my temporal Estate, it is my Will, that after my Mother's Decease, the Interest of my Estate at Idsworth (intending the whole Bannisters Estate) shall go towards Payment of my Debts, and afterwards towards raising my Childrens Portions in Manner following: First I bequeath to my eldest Daughter Mary 1500 l. Item, To my two Daughters Margaret and Elizabeth 1500 l. to be divided between them; and if it shall please God that one of them die (meaning before*
21 Years

21 Years, or Marriage, then the surviving Daughter to have 1000 l. and if both die (meaning as aforesaid) then 'tis my Desire, that 500 l. Part of the said 1500 l. be given to my said Daughter, 500 l. to my Son Robert, and 500 l. to my Son William; and if it please God, my Daughter Mary die (meaning before 21, or Marriage) then her Portion to be equally divided amongst my surviving Children, &c. and of my last Will and Testament, I constitute my Brother Wm. Dormer, my Nephew John Webb, and Geo. Weedon, Executors.

The Executors pretend they cannot act as Trustees, because they are not expressly so appointed; and now the Plaintiffs exhibit their Bill to have their Legacies paid, and to compel the Executors to accept the Trust, and perform the same, and to examine Witnesses in *perpetuam rei memoriam* to prove the said Will.

The Heir at Law, &c. insists, that no more of *Banmisters* can be sold to pay the Testator's Debts, than that Part which lies in *Idsworth*, and as to his Sisters Portions, 'tis not expressed in the Will when their Portions shall be paid.

Upon hearing this Cause, the following Points were determin'd,

(1.) Whether the Executors shall be intended to be Trustees, and the Court was of Opinion, that they should be so intended.

(2.) The next Question was, when the Childrens Legacies were payable, there being no Time certain appointed by the Will, for the Payment thereof; and the Court held, that they were payable at the Age of 21, or Days of Marriage; and that the Younger Children were to have the Benefit of the Contingencies upon the Death of the Daughters.

(3.) What was intended by the Testator, by the Devise of the *Idsworth Estate*; and the Court held, that the whole *Banmisters* Estate was intended by the Will to be liable to the Debts and Legacies.

It was accordingly decreed, that the Executors accept the Trust, and receive the Rents, and account before a Master; that the personal Estate be first applied for Payment of the Testator's Debts, and if that fall short, then the Rents of the real Estate, the Surplus to be put out to raise Portions for the Children, the Executors to be protected, for what they shall do in Pursuance of this Decree, and to be allowed their Charges and Expences.

That the Mother shall have the Custody of the Person of the Heir, and of his Estate, the Master to take an Account of the Profits, and direct the putting it out for the Benefit of the Heir.

That the Guardian be enjoined from committing Waste, and to be allowed her Charges, and convenient Maintenance for the Heir out of the Profits of his Estate.

Daniel Bland, *Executor of Rielliot, Plaintiff.*

Allison Elliot, Isaac Harvey, and Patrick Arnett,
Defendants.

After a Sentence in the Spiritual Court against an Executor for a Legacy, &c. the Legatee was decreed to account for what she received of the Testator's personal Estate.

BILL brought by an Executor against a *Legatee*, to discover the Testator's personal Estate which came to her Hands, she being his Sister, and hath prosecuted him (the Plaintiff) in the *Ecclesiastical Court* for her Legacy; but *that what he hath received* is not sufficient to pay the Testator's Debts, including a Debt due to himself.

account for what she received of the Testator's personal Estate.

The Defendant on the contrary affirming she hath no Part of the Testator's personal Estate in her Hands; and that the Plaintiff hath sufficient *Assets* besides her Legacy; besides he doth not set forth in his Bill what Debts in Particular he hath paid, or what is come to his Hands; and that she (the Defendant) *hath obtained a Sentence in the Ecclesiastical Court* for her Legacy and *Costs*, that Court being fully satisfied that the Plaintiff had sufficient *Assets*.

But the Court was of Opinion, that this Matter was proper for an Account in this Court, and ordered that the Plaintiff should be examined upon *Interrogatories* as to the Value of the Estate, and what came to his Hands, wherein the Defendant was not to be concluded, but admitted to make what Proof she could to prove *Assets* in the Hands of the Plaintiff; and if it appears *that he had Assets* sufficient to pay her Legacy, then he is ordered to pay the same with Interest and *full Costs*, both here and in the Spiritual Court, &c.

Arthur Betsworth, *Merchant, Plaintiff.*

Edmund Clerke, and John Archer, and several
other Partners of a Ship, Defendants.

THE Plaintiff being a Merchant, and Correspondent with the *Fizes* at *Barcelona*; and Archer the Defendant being Master and Part-owner of the Ship, called the *Burdeaux Merchant* of *Yarmouth* of 90 Tons, then in the Port of *London*, of which the Plaintiff had purchased the Freight of 70 Tons of Fish, to be sent from *Falmouth* to *Barcelona*; and it was agreed by *Charity-Party*, between him (the Plaintiff) and the rest of the Part-owners, that the Ship should sail directly to *Falmouth*, and from thence to *Barcelona*, without taking in any other Fish or Goods, &c. and that the Plaintiff should pay 16 Pieces of 8, *Sevil* and *Mexico*, per Ton, &c. and for the mutual Performance, each bound himself to the other together with the said Ship, Freight, Apparel and Goods respectively in 400 *l. Sterling*.

Where an Action is brought for Freight and Damages, laid to double the Sum of the Penalty of the *Charter-Party*; Execution shall not go beyond that Penalty, though more may be recover'd in Damages.

The Ship arrived at *Falmouth*, and the Factors of the Plaintiff loaded on board 70 Tons of *Pilchards* at the Price agreed on, and cleared the Ship at the *Custom-house* there.

Afterwards the Defendant Archer the Master thereof, came back to *Plimouth*, where he staid till about the later End of *January*, and set sail again, and deviated to *Cartagena*, and took in other Goods there as he had also done at *Plimouth*, and did not come to *Barcelona* till the *Lent* following, and then the Market for Fish was over, which the Plaintiff affirmed was to his Damage of 1600 *l. which was the Sum the Freight* came to; and therefore he exhibited this Bill to be discharged thereof, and for a Discovery of the Premises and Relief, &c.

The Defendant Archer excused his Stay at *Plimouth*, by Reason of contrary Winds; and that he was forced into *Cartagena* to stop Leaks, and there he unladed 82 Barrels of *Pilchards*, and sold them for Silver and *Bacilla*; and called at *Alicant*, and arrived at *Barcelona* 29 *March*; and that the Fish were in good Condition, and might have been sold at good Rates.

But that the Plaintiff by his Agents there arrested the Ship and Goods, and converted the same; and therefore they had brought their Action for the Freight which was laid to the Value of 1500 *l.* and had brought *Trover* for the Ship, &c. and laid their Damage to 1500.

The Court, upon hearing the Cause, decreed, that if the Plaintiffs in the Action for the *Freight* recovered more than 400*l.* the Penalty of the *Charter-Party*, yet Execution shall go out for no more.

But as to the *Action* of *Trover*, no Order was made, but that the *Defendants* may recover as much as they can on that *Action*, and make Use of the *Depositions* of such Witnesses who are dead, or cannot attend the *Trial*.

Charles Bargrave and Elizabeth his Wife, the Daughter of George Whightwick, Plaintiffs.

Humphrey Whightwick, Executor of the said George Whightwick, Samuel Curtis and Martha his Wife, Defendants.

Devise of 600*l.* a-piece to be paid to his two Daughters, at the Age of twenty-one, and the Residue of his personal Estate to his Son George, who died in his Minority: Decreed that a Moiety of the residuary Part of his Estate was immediately vested in each of his Sisters, and shall not be subject to the Contingency of the Death of either of them, dying before twenty-one Years old.

George Whightwick, the Father of the Plaintiff Elizabeth and of the Defendant Martha, being seised and possessed of a considerable real and personal Estate in December 1664, made his Will, and amongst other Things devised to his Daughter Elizabeth 600*l.* and to be paid at her Age of twenty-one, and devised the like Sum of 600*l.* to his Daughter Martha, and gave the Residue of his personal Estate, and all his Lands to his Son George; and declared, that if either of his said Children should die in their Minority, that the Survivors should be Heirs in equal Proportions, and made Hump. Whightwick Executor, and died.

Martha married the Defendant Curtis, and having attained the Age of twenty-one Years, received her 600*l.* and George her Brother being dead in his Minority, and Intestate, she likewise received a Moiety of the residuary Part, devised to him as aforesaid.

The Plaintiff Elizabeth married Charles Bargrave, but is not yet of the Age of twenty-one; and therefore the Executor refused to pay the 600*l.* devised to her, and keep both the same and the residuary Moiety of the Estate of Charles her Brother deceased; for that the 600*l.* is secured on a Mortgage, and for that there is a Possibility, that Elizabeth not yet 21, may die, and Martha her Sister may survive; and then the whole will belong to her.

But the Court was of Opinion, that the *residuary Part* of the personal Estate was not subject to any *Contingency* of Survivorship, but that the Interest thereof immediately vested in the Plaintiff *Elizabeth*, upon the Death of *George* her Brother; and therefore ordered an Account, and Satisfaction thereof; and that the 600*l.* continue on the Mortgage, and the Interest thereof to be paid to *Elizabeth*, during her Minority; and that if she die before twenty-one, living *Martha*, then to be paid to her.

John Friend, *Plaintiff*.

Robert Burgh, *Defendant*.

THE Plaintiff was in Execution upon a Judgment obtained on a Bond, and being thus in Execution, the principal Sum and Interest, and Costs were tendered to the Obligee, but he would not discharge him out of Execution without paying the whole Penalty of the Bond; and thereupon the Plaintiff exhibited his Bill, to be relieved against the said Penalty which he had paid to the said Obligee.

The Court ordered him to refund the Overplus of the Money.

Nathaniel Denew and Nicholas Cullen,
Plaintiffs.

Abraham Stock, *Defendant*.

THE Plaintiffs were Sureties for one *Polman*, who had purchased a Ship in the Time of the War with the *Dutch*, which the Defendant pretended was his Ship, and taken by *Dutch* Privateers; and afterwards sold by them to one *Anderson*, who sold her to *Polman*, and being come to *Dover*, the Ship was there arrested by the Defendant *Stock*, by Process out of the Admiralty of the *Cinque-Ports*; and thereupon *Polman* gave a Bond of 300*l.* Penalty, in which the Plaintiffs were likewise bound with him, conditioned, that if the Ship should be adjudged murrer to a Bill, for that the Plaintiff did not set forth, that the Lord Warden had Authority to grant such Commission, the Court made no Order as to that Matter, but could not relieve the Plaintiff, because the Appeal was not made till fifteen Days after the Sentence.

to *Stock*, then *Polman* should pay to him 300*l.* that being the Value of the Ship, and in the mean Time the Ship was to be delivered from the Arrest.

Afterwards the Cause in the Admiralty proceeded, and *Stock* procured a Sentence for the Ship; whereupon *Polman* petitioned the *Lord Warden of the Cinque-Ports* for a Commission of Delegates to review the said Sentence, setting forth the Matters aforesaid, and insisting on the fourth Article of the Treaty of Peace, wherein it was ordered, that all Ships taken during the War should remain in the Hands of the Possessors, and upon hearing whereof the former Sentence was revoked, and *Polman* and his Sureties dismissed, and the Bond ordered to be delivered up and cancelled, and this Order confirmed by the King.

But *Stock* the Defendant had by some undue Means the Bond delivered to him, and being withdrawn out of the Jurisdiction of the *Cinque-Ports*, refused to obey the said Sentence, but hath brought an Action of Debt against the Plaintiffs, against which they brought this Bill to be relieved.

The Defendant *Stock* demurred, for that the Bill did not set forth the *Lord Warden* had Power to grant a Commission of Delegates; and for that by the Laws of this Realm all Commissions of Appeal and Review are to be granted by the King out of this Court, and not elsewhere.

On arguing this Demurrer, the Court would not determine whether the *Lord Warden* had a Power to grant a Commission of Delegates, but the *Lord Chancellor* declared, that though this Court hath an *Admiral Jurisdiction*, yet it could not be exercised in this Case, because the Time for bringing the *Appeal* was lapsed, which ought to have been done within *fifteen Days* after the Sentence; therefore he saw no cause to relieve the Plaintiff, but only against the Penalty of the Bond, which being 300*l.* and the Ship only worth 150*l.* therefore ordered the Payment thereof with Interest ever since the Sentence, and the Charges of obtaining thereof in the Admiralty, and Costs both at Law, and in this Court, &c.

Edmund Draper, *Plaintiff.*

Thomas Dean, *and* Sir Robert Jafon, *Defendants.*

THE Plaintiff *Draper* lent Sir *Robert Jafon* 1000*l.* who for securing the Repayment thereof with Interest, mortgaged the Lands in the Bill, &c. afterwards the Defendant *Dean* set up some prior Incumbrances to defeat the said Mortgage, and particularly a Statute of 5000*l.* against which the Plaintiff now exhibited his Bill to be relieved, for that the Defendant *Dean* having furnished Sir *Rob. Jafon* in the Life-time of his Father with some Goods, and with five Horses, valued the same at 2500*l.* for which this Statute of 5000*l.* was given; but that the Horses and the Goods were afterwards sold by Sir *Robert Jafon* for 280*l.* which was the utmost Value thereof; and all this Matter appearing by the Answer of Sir *Robert* himself,

Relief from
a fraudulent
Sale of
Goods to the
Son in the
Life-time of
his Father.

The Court declared this to be a Case of great Hardship, and that * Dealings of this Nature ought to be discouraged, and that if Sir *Robert* had been Plaintiff in the Suit, he ought to be relieved.

* The ways
of Cheating
being infi-
nite, 'tis not
possible to

reduce them to a Rule what Fraud shall be sufficient to set aside a Sale or Contract; but in the Civil Law, by Fraud, is meant all Surprize, Trick, cunning Dissembling, and any unfair Means to cheat another. *Dom. 1. Vol. 256.*

However it was decreed to account, and to compute what was due to *Dean* for Horses and Good; and the real Values thereof to be sold at the respective Times when the same were sold and delivered, with Interest from such Time, and Costs of this Suit, to be deducted by the Plaintiff out of what shall appear to be due to *Dean*, Remainder to be paid to him at a certain Time and Place, &c. and on Payment thereof, the Statute is to be vacated.

John Aldridge, Robert *and* Nicholas Aldridge,
and Mary Keat, *Widow, Plaintiffs.*

Edward Duke, George Duke, Nicholas Aldridge,
John Dean *and* Avisia Duke, *Defendants.*

Nicholas Aldridge Father of the Plaintiffs, being seised in Fee of the Lands in the Bill, did, in the Year 1652, settle the same on *Edw. Duke*, and other Trustees (of which the said Mortgage, who had Notice of a prior Lease made for raising Childrens Portions, was set aside.

A subse-
quent Lease
made to one
by way of
Edward

Edward is now the Survivor) for 99 Years, upon Trust to raise 800*l.* for Portions for his Children (the Plaintiffs,) and after the said Sum was raised, then to assigne the Residue of the said Term to his Son *Nich. Aldridge*.

But being indebted in the Sum of 1700*l.* as it was pretended, to one *John Duke*, he the said *Nich. Aldridge* the Father, and *Nicholas* his Son were in the Year 1659, prevailed on to make a Lease of the Premises to the said *John Duke* for 500 Years, to secure the Payment of the said principal Sum and Interest at a certain Time, &c. which not being paid, a Decree was obtained to foreclose the Equity of Redemption; and now *Geo. Duke* the Son of *John* claims the same as a Purchaser for a valuable Consideration, pretending that the *Deed* made in 1652, was voluntary, and without any Consideration, and ought not to prejudice his Interest.

The Plaintiffs insist, that their *Deed* in 1652, was precedent to the Defendant's Title, and that *John Duke* the Father had Notice of the said *Deed*, and fully consented to it; and therefore he had other Securities made to him by *Nich. Aldridge*, &c. for the said Money; and that the *Decree* to foreclose was obtained by *Collusion*, and that the Plaintiffs were neither Parties or Privies to it.

This appearing to be the Case, the Court directed a Trial, whether the Lease, made by *Nich. Aldridge* the Father and Son, in the Year 1659, was upon full Notice of the *Deed* in 1652; and upon the Trial it was found to be made upon Notice, &c.

Whereupon it was decreed, that the 800*l.* should be paid with Interest from the Time the same should be paid by the *Deed* in 1652, and that the Lands therein mentioned shall be chargeable therewith till paid, and Costs out of the Profits of the said Lease; and for the more speedy Payment, the Defendants shall join with the Plaintiffs in the Sale of the Premises for the Remainder of the said Term of 99 Years according to the Purport of the said *Deed*, &c.

I

Term.

Term. Sanct. Hill.

32 Car. 2. Anno 1679-80.

Sir Thomas Davis, and Robert Harvey, surviving Executors of Hugh Audley, Esq; Plaintiffs.

Frances Rea and William Church, Executors of Sir John Rea, Mary Beaufoy, Widow and Administratrix of Nicholas Beaufoy, and Sir Edward Rent, Executor of Thomas Mead, Defendants.

SIR *John Rea* a Scrivener, being employed by *Audley* to place out Money on Securities for him, which were generally taken in other Peoples Names, particularly in the Names of *Beaufoy* and *Mead*; and amongst the rest there was a Security for 700 *l.* the Money of the said *Audley*, and taken in the Name of *Beaufoy*, but lent to one *Cook*, which *Sir John* procured him to alter; and thereupon *Cook* gave a new Bond in the Penalty of 1500 *l.* in the Name of the Defendant *Fran. Rea* his Daughter, conditioned to pay 785 *l.* 10 *s.* 00 *d.* and the old Bond in the Name of *Beaufoy* was delivered up, by which Means the said *Fran. Rea* became a Trustee to *Audley*, for so much Money as *Beaufoy* and *Mead* were, on former Securities.

An Award made, and a Release given pursuant thereunto shall not affect those who are no Parties to it.

Sir John Rea died, and now a Bill was brought against the Defendants his Executors, &c. to discover this Trust.

The Defence of the Defendant was, that they claimed the Money by Virtue of an Award made by *Sir Edw. Turner*, between the said *Audley* and their Testator *Sir John Rea*, concerning some Differences between them about his Detaining the said *Audley's* Securities, by which out of a Schedule of Securities which their Testator produced, amounting to 32500 *l.* there were Securities awarded to the said *Audley*, amounting to 12500 *l.* Principal Money, besides Interest, which were delivered to *Aud-*

ley, pursuant to which Award the Plaintiffs as Executors of the said *Audley*, had sealed a *Release* of all Demands in Law and Equity, by which they would bar the Plaintiffs from demanding the said 700*l.* tho' Sir *John* concealed this Debt from the Arbitrators, and the Schedule was never perused by *Audley*, and the Plaintiffs were wholly Strangers to this Affair, Sir *John* being lately dead.

And upon a Bill exhibited by *Cook* to have the Plaintiffs and the Defendants interplead, that he might be indemnified upon Payment of the Money, an Order was made, that *Fran. Rea* giving such Security as the Master should approve, to abide the Order on hearing, in such Case the said principal Sum and Interest should be paid to her.

Accordingly she and her Security entered into a *Recognisance* to the *Master of the Rolls*, and Sir *Tho. Bennett* enrolled it in this Court, and in the Penalty of 1400*l.* conditioned to abide the Order on hearing; and thereupon, as it appeared in Proof, the said *Cook* paid to the said *Fran. Rea* 834*l.* for Principal, Interest and Costs due on the said Bond.

At the Hearing of this Cause, the Court was satisfied, that this was *Audley's* Money, and that the said *Frances Rea* was a Trustee for him, by renewing the Security to *Beaufoy* in her Name, and that she now stood in the Place of the said *Beaufoy*.

That the said *Award and Release* being made between *Audley* and Sir *John Rea*, could not affect this Debt of 700*l.* which at that Time, and before, was actually paid to the Defendant *Fran. Rea* who was no Party either to the Award, or to the *Release*.

Therefore she was ordered forthwith to pay to the Plaintiffs the said 834*l.* with Interest, from the Time she received the same, or in Default thereof, at a Time appointed for the Payment, &c. the Plaintiffs be at Liberty to put the said *Recognisance* in Suit, &c.

Peter Calverd *and others, the Executors of* Thomas Calverd, *and* Felix, Susan *and* Sarah Calverd, *the Son and Daughters of the said* Thomas Calverd, *by* Anne *their Mother and Guardian, Plaintiffs.*

Felix Calverd, *Esq; and* Abraham Carter, *Executors of* Peter Calverd *deceased, and* Humphrey Bean, *Esq; Defendants.*

THE Defendant *Humphrey Bean* was intrusted by *Thomas Calverd*, to manage his Part of the Excise of Beer and Ale in the County of *Essex*; but dying before *Bean* gave him a full Account, the Executors of the said *Tho. Calverd* now exhibit their Bill against the said *Bean* to bring him to Account, for their Testator's Estate in his Hands.

Release given by an Executor, but not as Executor shall not extend to bar a demand upon any other Account.

The Defendant *Bean* pleads a *Release* given to him by *Peter Calverd* the Plaintiff, one of the Executors of the said *Thomas*, and this was to an Action at Law brought by the Plaintiffs upon a Covenant in an Indenture Tripartite, wherein the Defendant did covenant to account.

But it was insisted by the Counsel for the Plaintiffs, and it was so in Proof, that this *Release* was given by the Plaintiff *Peter Calverd*, and tho' after the Testator's Death, yet not as Executor to him, but only in Reference to a particular Account between *Bean* and him concerning a Trade in *Barbadoes*, for which there was then a Suit depending between them in the *Exchequer*, and that Suit was determined by giving the said *Release*, so that it ought not to be extended to *bar* any thing in demand from the said *Bean*, as due to the Estate of the said Testator.

Thereupon the Court set aside the said *Release* as to such Demand, and that it should not be pleaded in *Bar* to any Suit of that Nature either in Law or Equity, nor given in Evidence in any Suit concerning the Estate of *Thomas Calverd* the Testator.

Ford Lord Grey, *Plaintiff*.

Philip Grey, Thomas Carr, Gilbert Reading *and*
William Warren, *Defendants*.

Bill to discover what Leases were made, &c. the Defendant demurs, for that the Plaintiff did not make Oath that he had not the Leases or Counterparts; but it was over-ruled.

THIS Bill was brought by the *Lord Grey*, to discover Leases and Estates made to the Defendant by *Wm. Lord Grey* his Grandfather; and that the Defendant *Warren* may particularly set forth what Leases were made by the said *William* to any other of the Defendants, and for what Terms of Years, &c. and for what Consideration.

The Defendants demur, for that the Plaintiff hath not made Oath or affirmed on his Honour, that he hath not the Leases, or any of them, or the Counterparts thereof, which by the Rules of this Court ought to be done before the Defendants, or either of them make any such Discovery; and that the Plaintiff's Bill is to impeach, and not to confirm the Defendant's Title.

But the Demurrer as to *Warren*, from whom the chief Discovery is sought, was over-ruled, and he was ordered to answer, but it was saved as to the other Defendants till after *Warren's* Answer.

Termino Paschæ.

32 Car. 2. Anno 1680.

Lewis Earl of Feversham, Plaintiff.

Lewis Watson, and the Lady Katharine Sands
his Wife, the Daughter and Heir of George
late Earl of Feversham an Infant, by her Guar-
dian, Defendants.

THE Earl of Feversham proposed to Sir George Sands, When a Co-
in order to marry his Eldest Daughter Mary, to settle venant is
upon her 2000 l. in this Manner, (*viz.*) that being seised of penned by
the Manor of *Holdenby* in *Northamptonshire*, worth 500 l. way of Con-
dition pre-
per Ann. at present, (and 1100 l. *per Ann.* when the Leases were cedent, in
out) to purchase in those Leases, and assign them to Trustees to such Case,
the Use of himself for Life, Remainder to the said Mary for the Cove-
Life, Remainder to the Issue Males of that Marriage, Remain- nantor shall
der to his own Right Heir, and to sell a Pension of 20000 l. not be com-
granted to him by *K. Charles II.* for which he was offered 14000 l. pelled in E.
and to purchase as much more as would make up *Holdenby* quity to per-
2000 l. *per Ann.* to be settled in Manner as aforesaid, and to form his
procure Sir George to be made *Earl of Feversham* for Life, Re- Part before
mainder to himself in Tail. the other
hath per-
formed his
Part.

Thereupon the Treaty went on, and Sir George was made
E. of Feversham, and the Plaintiff assigned the Manor and Pre-
misses of *Holdenby* in Manner as aforesaid; but there was an ex-
press Agreement in the Articles, that * *before Sir George should* * This was
make the Settlement which he agreed to make, which was 1000 l. a Condition
per Ann. in present, and 3000 l. at his Decease, that the Plain- precedent,
tiff should purchase and settle 840 l. per Annum, Part of the
intended 2000 l. on the said Mary for Life, &c.

The Marriage took Effect; but Sir George died before any
Thing was done, and sometime after the said Mary died with-
out Issue.

After-

Afterwards the Plaintiff now *Earl of Feversham*, exhibited this Bill against the *Lady Katharine Sands* an Infant, and Daughter and Heir of the said *Sir George*, to have the said 3000*l.* settled on him, according to those Marriage-Articles.

The said *Lady Katharine* the Defendant pleads the aforesaid Articles, as to all Matters Precedent thereunto; and that the same were never performed by the Plaintiff, by purchasing and settling 840*l.* on her Sister *Mary*, which was a *Condition precedent*, and ought to have been performed by him, to entitle him to this Demand; and that there was no Reason to bind her Inheritance being an Infant, by Articles which were never performed by the Plaintiff, or the Non-performance never dispensed withall by *Earl George*, who often declared, that as it never was his Intention, so he never would settle 3000*l. per Annum* on the Plaintiff, till he performed the said Articles on his Part.

At the Hearing this Cause, it was insisted by the Counsel for the Plaintiff, that it would be very hard he should suffer by the unwary penning these Articles; and that it was *Earl George's* Unwillingness that the Plaintiff should sell his *Pension* at an Under-value (out of which the 840*l.* was to be purchased) that the same was not settled sooner; and that he declared he would not take any Advantage thereof.

The Lord Chancellor, assisted with the *Lord Chief Justice North* and the *Lord Chief Baron Mountague*, declared, that it appeared to him, that the Articles were executed with great Deliberation without any Design or Surprise, or unwary Wording them; and that 'tis manifest by the said Articles, that the Plaintiff was to do the *precedent Act*; and that was by making the Settlement of 840*l.* on his Part before *Earl George* was to make the Settlement of 3000*l. per Ann.* on his Part.

That this Article was penned in a different Manner from the rest; because the other Things therein mentioned had a Time prefixed for doing them; but there was no fixed or determinate Time for settling this 3000*l. per Ann.* because that was to be done after the Purchase and Settlement of 840*l.* and it was very uncertain when that would be; and it doth not appear, that the Parties came to any new Agreement, or dispensed with the Performance of the Articles on the Part of the Plaintiff, which Dispensation it had been Incumbent on him to procure.

The Allegation made by the Plaintiff, that *Earl George* was contented, that the Pension should not be sold (if it had been sufficiently proved) doth not amount to any Agreement between the Parties to dispense with the Articles, or to make any Variation from them; for the most that can be made of it is, that he did not press the Plaintiff to sell at any Loss, but that he might take his own Time to sell, but still it was to be before any Settlement

tlement was to be made by *Earl George* of the said 3000*l. per Annum.*

So that the Settlement of 840*l. per ann.* to be made by the Plaintiff, was in Nature of a *Condition precedent*, which cannot be dispensed with in Equity; because a Court of Equity cannot change or alter the Contract of the Parties, nor mend those Agreements they make between themselves.

If the Articles had been so penned, that each Party had depended upon the mutual and reciprocal Covenants of each other, there might have been some Colour to decree a Performance to the Plaintiff, tho' he had not performed his Part; because in such Case, *Earl George* might have recovered Damages at Law without averring the Performance on his Part.

But where a Covenant is penned by way of *Condition precedent*, so as no Action lies at Common Law without averring Performance by the Plaintiff in the Action; 'tis plain in Equity, and by the Nature of the Contract, that the Covenantor was never to perform his Part, unless the other had performed with him; and there cannot be a better Method for any Man to save himself, than to pen his Covenant in this Manner.

'Tis true, if the Plaintiff had such a legal Advantage by the penning this Covenant, as that he might have compelled the Defendants to have fully performed the Agreement, or to pay the Extremity in Damages; perhaps this Court would not have restrained him, but where the Plaintiff seeks an Extremity in Equity by enforcing a Settlement of 3000*l. per Ann.* on him, and taking it away from an Infant Heir, (during the Life of the Plaintiff) from whom the Law will not take it, in such Case it would be hard to decree it.

If *Mary Sands* the Wife of the Plaintiff had been living, or if she had left any Issue being dead, there might have been some Ground for Relief; because in either of these Cases the Equity of the Contract had been still subsisting, but by her Death without Issue, the whole Reason of this Contract was dissolved, and the Plaintiff suffers no Loss, but only the Disappointment of his reasonable Hopes and Expectancy; and *Earl George* could not have better provided against this Accident than he hath done by this Article; and probably the Plaintiff himself might be so advised, because *Earl George* survived his Daughter, and the Plaintiff never demanded this Settlement of 3000*l. per Ann.* of him whilst he lived; therefore the Court saw no Ground for any Relief, but ordered the Bill to be dismissed.

Term. Sanct. Trin.

32 Car. 2. Anno 1680.

Paul Donning, *Plaintiff*.Benjamin Le Need, *Merchant*, and Elizabeth his
Wife, Aaron Falcon, and Ferry Dubois, *De-*
fendants.

A Settle-
ment in
Marriage in
Trust for
Husband and
Wife, &c.
was by Con-
sent of all
Parties can-
celled, and
the Trustees
indemnified.

THE Plaintiff upon a Treaty of Marriage to be had be-
tween the Defendant *Benjamin*, with *Elizabeth* his
Daughter, agreed to give 1500*l.* with her, after such
Time as the said *Benjamin* (being a *Merchant alien*)
should procure his *Naturalization*, which was afterwards done,
and then the said Marriage did take Effect.

And it was by Indenture *Tripartite* covenanted, that the
Plaintiff should lay out the said 1500*l.* either in Lands or Houses
within forty Miles of *London*, and settle the same upon the said
Benjamin and *Elizabeth*, and the Survivor of them for Life,
Remainder to the Issue of that Marriage, Remainder to the Heirs
of the Body of the said *Elizabeth*, Remainder as to one Moiety,
to the said *Benjamin* and his Heirs, and as to the other Moie-
ty, to the said *Elizabeth* and her Heirs.

But the Plaintiff was afterwards prevailed on by the Importu-
nity of his Son in Law *Benjamin* and his Wife, to have the
whole 1500*l.* laid out in a *Stock* to trade, pretending they
could make better Advantage of it that way than to purchase
Land; and that they were willing to accept the same instead of
Land.

The Plaintiff now exhibited this Bill against the Defendants and
the Trustees, that he might be indemnified from any future De-
mand for this Money, there being a Trust fixed by the said *Tri-*
partite Deed, and the Wife being under Coverture, could
not consent to bind her self; and all Parties being before the
Court and consenting, that the Plaintiff should be discharged,
and the said Deed cancelled, it was decreed accordingly.

Matthew Brown, *Plaintiff*.

Benjamin Stebbing, *Defendant*.

THE Plaintiff married the Daughter of one *Hancock*, with whom he had no present Portion; but the Father before the said Marriage agreed to settle all his Estate, so as after his Decease it might come to the Plaintiff and his Wife, and the Issue of that Marriage; and the Defendant in Pretence of Friendship to the Plaintiff, undertook that the Father should execute such Conveyance.

Fraudulent
Conveyance
set aside.

But before the same was done, both the Father and his Daughter (the Plaintiff's Wife) died, and then the Defendant pretends, that such a Conveyance was drawn, but never executed; but he himself got a Conveyance from the Father of all his Estate, for a Debt pretended to be due to him, (the Defendant) and had brought an Ejectment to recover the Possession; and now the Plaintiff exhibited his Bill to have the Marriage-Agreement performed.

The Court declared, that the Conveyance to the Defendant was fraudulent, he having Notice of the *Marriage-Agreement*; and decreed the same to be set aside, and a Reconveyance to the Plaintiffs and his Heirs, and *Costs, &c.*

James Black, *Brother and Heir of William Black deceased, Plaintiff*.

Thomas Cock and Robert Bernard, *Defendants*.

William Black being seised in Fee of the Lands in Question as *Cestui que Trust*, died; and afterwards the Defendant Cock married *Elizabeth* the Daughter of the said *William*, and prevailed with the other Defendant *Bernard* (who was the surviving *Trustee*) by and with the Consent of *Eleanor* the Mother of *Elizabeth*, to make a Conveyance of the Premises to him the said *Cock*, (at the same time taking Security to indemnify him for so doing) and now and for some Time past, *Cock* being in Possession, he and his Wife levied a *Fine* of the said Lands to the Use of him and his Heirs.

In what
Case a Fine
and Non-
claim shall
be no Bar.

The Plaintiff claims as Brother and Heir Male of the said *William*, but the Defendant insists on his Title by Virtue of the

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said

faid Conveyance from *Bernard*, and the Fine and Non-claim.

The Court was satisfied, that the Fine and Non-claim ought not to bar the Plaintiff, and therefore decreed the Possession to him, and a Conveyance from the Defendant and his Wife and all claiming under them, and *Cock* to account, and to pay the mean Profits since the Death of *Eleanor*, &c.

Sir Robert Henley, Plaintiff.

John Morgan, Gawen Turner, Anne his Wife, Edward May, and James Zouch, Esq; Defendants.

The Plaintiff purchased an Estate charged with an Annuity for Life, which Annuity was

THE Plaintiff *Sir Robert Henley*, in the Year 1674, purchased the Manor of *Grewell in Hampshire* of the Defendant *James Zouch*, for which he gave 4000*l.* one Moiety of the said Manor being subject to the Payment of an Annuity of 100 *l. per Annum* for a certain Term of Years to one *Barker*. brought in by one who had married the Defendant's Mother, when the Defendant was very young; and out of the Money which he had received out of the Defendant's Estate; if so the Lands shall be discharged, and remain clear to the Purchaser; but if the Money was paid out of the second Husband's Estate, then the Lands shall be still charged with the Payment of this Annuity whilst the Annuitant is living.

The said Defendant *James Zouch* being left very young at the Death of his Father, and to the Tuition of his Mother, she not long afterwards married *Sir John Lloyd*, and he possessed himself of the said Manor, and received the Profits for the Space of *twenty Years* and upwards, and within that Time he compounded with *Barker*, and purchased the Annuity of him, and the Arrears thereof for the Residue of a Term of Years then to come, which Purchase was made in the Name of the Defendant *Morgan*, who was Servant to *Sir John Lloyd*; and as it was suggested in the Bill, the Consideration-Money was paid by what he received out of the Profits of the Infant's Estate.

Sir John Lloyd died Intestate, and afterwards *Turner* the Defendant married *Anne* the Daughter of the said Intestate, in whose Right as Administratrix to her said Father the said Defendant *Turner* sets up a Title to a Moiety of the said Manor, and to the said Annuity, and all the *Arrears thereof*, and hath brought an *Ejectment* in the Name of the Defendant *May* to recover the Possession, against which this Bill was brought to be reliev'd.

The *Defendants Turner* and his Wife by their Answer set forth at large their Claim to the *Arrears* of the said Annuity as she is Administratrix to her Father Sir *John Lloyd* the Purchaser, and insist upon it.

So that the only Question was, how far the Moiety of the said Manor stands chargeable with the Arrears of the said Annuity due to *Barker*, and what was paid by Sir *John Lloyd*, for the Assignment thereof to his Servant *Morgan*, in Trust for himself.

And as to that Matter, the Court declared, that if Sir *John Lloyd* had enough of the Infant's Money in his Hands at the Time of the Purchase he made of the said Annuity, and the Arrears, to satisfy the Consideration he actually paid to *Barker* for the same; or if he received after the Purchase sufficient out of the Infant's Estate to pay for the same; that in such Case it ought to redound, and go to the Benefit of the Plaintiff, and to extinguish the Claim of the Defendants by Virtue of the said Administration; and the same was decreed accordingly; but if Sir *John Lloyd* did not receive sufficient out of the Infant's Estate to satisfy the Consideration for the said Purchase, and for the growing Payments, to the Death of the said *Barker*, then the Moiety of the said Manor is to stand chargeable with the Residue which shall be found deficient, which the Master is to examine and report, &c.

Henry Davis, Esq; Plaintiff.

Elizabeth Davis Spinster, Defendant.

THIS was a *Certiorari Bill* to remove a Cause depending in the Court of *Exchequer* for the County *Palatine of Chester*, wherein the said *Elizabeth Davis* was Plaintiff against the now Plaintiff for 1500*l.* being her Portion charged on certain Lands in the said *County Palatine*, by her late Father. Plea of the Jurisdiction of the County Palatine of Chester, &c. allowed. good.

In this Bill it was suggested by the Plaintiff, that he had several *Witnesses* living, out of the Jurisdiction of the Court of *Exchequer of Chester*, and could not be compelled by the Process of that Court to come in, and give their Testimony.

And that Sir *Francis Middleton* and others who were *Trustees* in the *Deed of Settlement*, by which the said 1500*l.* was charged on the *Premises*, had the original *Deed* in their Custody, out of the Jurisdiction of the said Court; and that they themselves lived out of the *Jurisdiction of the County Palatine*; for which Reason that Court could not aid him (the Plaintiff)

for want of Power to compel those who lived out of the County, to appear and answer any Bill at his (the Plaintiff's) Suit there, and prays an Injunction to stay the *Proceedings* of the said *Elizabeth* in that Court.

To which she pleads the Substance of the *Proceedings* in that Court, and the Cause duly heard, and *decreed* to account, which was afterwards duly taken and reported; and thereupon 1500*l.* was reported due to the said *Eliz. Davis*, and accordingly it was *decreed* by that Court, that the said Sum should be paid to her by the now Plaintiff at a Time *therein appointed*.

And she farther pleaded, that *Chester* is an ancient *County Palatine*, Time out of Mind, and had *Royal Franchises* belonging to a *County Palatine*, which had been always allowed in the Law.

And that all Suits concerning Lands, Contracts, Causes lying, arising or growing within the said *County Palatine*, are determinable there, and not elsewhere, (Treason, Error, Foreign Plea, and Foreign Voucher only excepted.)

And that the *Court of Exchequer* there, hath been Time out of Mind a *Chancery Court*, for the said *County Palatine*, for the Hearing and Determining all Causes and Matters of Equity arising in the said *County Palatine*, subject to an *Appeal* to this Court; and that the now Plaintiff and Defendant at the Time of the Exhibiting the said Bill in the Court of *Exchequer* at *Chester*, and for several Years before, and after, were and are Inhabitants in the said *County Palatine*, and that the Lands charged with the said 1500*l.* and all the Matters wherein the said *Decree* was grounded, did and do lie, and are situate, and did arise within the said *County Palatine*.

And that Time out of Mind, it *hath been the constant Practice* of the said *Court of Exchequer*, that Witnesses dwelling and residing out of the said *County Palatine*, *have been examined* by Commission, issuing out the said *Court of Exchequer*, under the King's Seal of the said *County Palatine*, and executed where the Parties *please* or *desire* either in *England*, or in Foreign Parts for procuring their Examinations; and therefore demands the Judgment of this Court, if by the *Justice thereof* she is compellable to make an Answer to the said Bill.

The Court allowed the Plea, and dismissed the Bill with Costs.

Grace Cockman, *Widow, Plaintiff.*

Abraham Mitchell *and* Anne *his Wife*, Hugh Fawcett, William Farrer, *Esq;* James Michell, Jonathan Dobson, Matthew Wilkinson *and* John Bothomly, *Defendants.*

Hugh *Hazworth* being seised in Fee of the Lands in the Bill, *Decree for the Plaintiff to bring a Formedon in Remainder, that the Title might come in Question.* *Ec.* lying in *Hallifax* in *Yorkshire*, by his last Will dated in *Novemb. 17 Jac.* devised the same to *Michael Fawcett* for Life, and afterwards to *Hugh* the Son and Heir apparent of the said *Michaell*, and the Heirs of his Body, Remainder to the Heirs of the Body of *Michaell*, Remainder to *Michaell Ward* the Brother of the Plaintiff *Grace Cockman*, and to his Heirs and Assigns for ever.

The said Testator *Hugh Hazworth*, and also the said *Michaell* and *Hugh Fawcett* are dead without Issue, so that the Estate-Tail being spent, and *Mich. Ward* the Plaintiff's Brother being likewise dead without Issue, the Plaintiff as Sister and Heir of the said *Michaell*, ought to have the said Lands, and for that Purpose she the said *Grace Cockman* the Plaintiff hath brought a *Formedon* in Remainder against *Abraham Mitchell* and *Anne* his Wife, who have pleaded *Non-tenure*; and some other of the Defendants pretend a Conveyance from *Hugh Fawcett* to *Wm. Farrer*, by which the Estate-Tail was discontinued; and some a Devise to *James Mitchell*; whereas if there is any Conveyance to *Farrer* 'tis voluntary, or 'tis a Mortgage, and satisfied; and yet he hath procured the Premises to be conveyed from one to another, but still in Trust for himself, so that the Plaintiff cannot tell in whom the Freehold remains; but she is willing that the Mortgage (if any) should be satisfied, and that *Anne* the Widow of *Abr. Mitchell* should have her Dower.

Therefore the Plaintiff hath exhibited her Bill, claiming as Sister and Heir to *Mich. Ward*, to have an Account of the Profits in order to satisfy the Mortgage, (if any) and to discover in whom the *Freehold* of the *Premises* remains; and that she may either bring a *Formedon*, or proceed in that which she hath already brought.

The Defendants by their Answer set forth a Mortgage to *Wm. Farrer* from *Hugh Fawcett*, and a Devise of the Lands in Question by him to *Anne* his Wife and her Heirs, and a Conveyance from her to *Wilkinson* and his Heirs, and that the Equity of Redemption belongs to them.

The Lord Chancellor declared, that he ought to assist a legal Right where 'tis not to overthrow a Purchase; and *decreed*, that the Plaintiff should bring a *Formedon in Remainder* against *William Farrer*, upon the Will of *Hugh Haworth*, to which he should appear *gratis*, who shall be admitted to be Tenant of the *Freehold* to all Purposes, as if he was really Tenant thereof; and he shall not plead Non-tenure, but such other Plea as the Right shall be tried at the next Assises in *Yorkshire*; and if upon the said Trial a Verdict shall be found for the Plaintiff; yet he shall not have Possession until it shall appear what is due for Principal and Interest on the Mortgage, which shall first be paid, together with Costs to *Farrer* the *Mortgagee*, who shall be examined upon *Interrogatories* to perfect his Answer to discover what he hath receiv'd towards Satisfying the principal Sum and *Interest*; and that *Anne Mitchell* shall enjoy her Dower during her Life.

But *Farrer* making Default, and no Body appearing for him, tho' duly serv'd with Process as by *Affidavit* it appear'd, it was *decreed* against him, *Nisi causa, &c.* he paying 5 Marks Costs for this Day's Attendance before he shall be admitted to shew Cause, &c.

Charles Blois, *Esq;* Son and Heir of Sir William Blois an Infant, by the Lady Martha Prior his Guardian; Mary Brook Sister of Sir Robert Brook, the Lady Elizabeth Brook Widow, and Mother of the said Sir Robert Brook; Josiah Child, Daniel Mills and John Price, Plaintiffs.

Elizabeth Man, Widow of Thomas Man, *Esq;* deceased, Defendant.

Defeasance of a Judgment under both the Hands and Seals of Debtor and Creditor, and not relating to the Term in SIR Robert Brook being seised of the Manor and Lands in the Bill about *October* 1661, purchased the Manor of *Blomsted in Essex*, and borrowed some Part of the Purchase-Money, which Mr. Man the Defendant's late Husband procured for him, and was bound with him to repay, and was likewise bound to other Persons for the Debts of the said *Rob. Brook*, and had supply'd him with his own Money, and had done him *several Kindnesses*.

which the Judgment was given, was found by the Jury on a Trial directed out of this Court, not to be the Act and Deed of the Creditor.

I

That

That in *Michaelmas-Term* in the same Year Sir Robert gave a Judgment of 3000*l.* to the said *Man*, and about five Years afterwards, (*viz.*) 18 May 1666, Sir Robert did *defeasance* the said Judgment by an *Indenture* after this Manner, (*viz.*) That in case he should die without Issue, then his Heirs general, or his Executors or Administrators should within one Month after his Death pay to the said *Man*, his Executors or Administrators 3000*l.* or settle *Freehold* Lands of that yearly Value on him and his Heirs; and as the Plaintiff suggested this Judgment and *Defeasance* was to indemnify the said *Man* from all Debts in which he was engag'd for the said Sir Robert, and after those were satisfy'd, then the Judgment was to be vacated.

That Sir Robert by his Will dated in *Febr.* 1660, devised a Farm called *Westleton-Hall* to the said *Man* and his Heirs, worth 60*l.* per Annum, which was a sufficient Recompence for all his Kindnesses to the said Testator, and left all his Estate to the Management of Sir *Wm. Blois*, and afterwards died; and that Sir *William Blois* prov'd his Will, and sold the Estate at *Wanstead* to *Josiah Child*, *Mills*, *Price* and others, for Payment of Sir Robert's Debts, which were accordingly paid, and so *Man* was saved harmless, who about *October* 1670 died, and made the Defendant Executrix; and she brought several *Sci' Fac'* against the Plaintiffs as Tenants in Possession of Sir Robert Brook's Estate in *Essex* and *Suffolk*, to shew cause why she should not have Execution on the said Judgment; and therefore the Plaintiffs have exhibited this Bill against her to discover what Debts *Man* her Testator paid for Sir Robert, and to be relieved against the said Judgment according to the said *Defeasance*, which being under both their Hands and Seals, and in one single Writing, and not relating to that very Term in which the Judgment was enter'd could not be pleaded at Law.

On the other side it was insisted by the Defendant, that *Man* the Testator had lent the said Sir Robert Brook several Sums amounting to 3000*l.* for which the said Judgment was given and *defeasanced* as aforesaid; and insisted that the said Sum was a valuable Consideration for so contingent a Benefit; Sir Robert Brook's Lady being young, and then with Child; that the said Judgment and *Defeasance* were executed *bona fide*, and without Fraud, and the Counter-securing *Man* the Defendant's Testator from Sir Rob. Brook's Debts, was no Part of the Consideration of the said Judgment, &c. neither was the said *Defeasance* the Act of *Man* alone.

And whereas it was insisted by the Counsel for the Plaintiff, that the Devise of the aforesaid Farm to the said *Man* in Fee, was a sufficient Recompence for the Kindnesses he had done to Sir Robert Brook; it was answered, that could not be,
be-

because his Will was made a Year before the said Judgment was given.

The Court upon hearing this Cause, directed a Trial at Law, whether the Defeasance was the Act of *Man*, which was tried at the *King's Bench* Bar, and found that it was not; and it now being heard upon the Equity reserved, and the Counsel for the Plaintiff pressing for a new Trial, which being denied, they moved that the Defendant might accept of Land instead of 3000*l.* according to the *Defeasance* by which the Plaintiffs were to have such Election; and that the Devise of *Westleton-Hall* to the said *Man*, as aforesaid, might go in Part of the said 3000*l.* &c.

The Court declared, that the Defendant ought to have the *Benefit* of the said Judgment for 3000*l.* but without *Interest*, and decreed the said Sum to be paid to her, or Lands to that Value, according to the Defeasance; and that the Farm devised to *Man* be Part thereof, or if his Heirs will quit the said Farm, then the Heirs of Sir *Robert* are to settle so much on them, clear of all Incumbrances, as shall make up the Value of 3000*l.* that the Defendant shall have her Costs at Law, but none in this Court, and that if the 3000*l.* is not paid at such a Time, then the Bill to be dismissed, and the Defendant to resort to her Judgment; but if paid, then the Defendant is to vacate it on Record, or acknowledge Satisfaction, or assign the same to the Plaintiffs, and at their Charge, or to whom they shall appoint, &c.

Hatton Farmer, *Gent. Plaintiff.*

William Marston, and Dr. Edward Reynolds,
Defendants.

An Agree-
ment set aside
by the Con-
sent of both
Parties.

THE Plaintiff having agreed with the Defendant *Marston* to purchase some Lands of him, for which he was to pay 2000*l.* at several Times, (*viz.*) 790*l.* at the Sealing the Writings, and 1000*l.* more within 9 Months after; and having paid 210*l.* down, and prepar'd the Sum which was to be paid at the Sealing of the Writings, and came with the same at the Time and Place agreed on; but there were no Writings prepared, but instead thereof, *Marston* the Seller acquainted the Plaintiff that the other Defendant *Reynolds* would give 100*l.* more for his Lands; and that if the Plaintiff would condescend that he should be the Purchaser, he the said *Marston* would pay back the 210*l.* with Interest, to which the Plaintiff consented; and the other Defendant *Reynolds* promised that he would become the Plaintiff's Paymaster

master of the said Principal, Interest and Charges, if he could procure *Marston's* Order for that Purpose; and he refusing to give such Order, the Plaintiff exhibited his Bill to compel him, &c.

And the same was decreed accordingly, (*viz.*) that Doctor *Reynolds* should pay the 210 *l.* with *Interest* to *Marston*. &c.

Thomas Haslewood, *Esq;* Plaintiff.

Stephen Baldwin, *Executor* of Edward Baldwin,
deceased, Defendant.

THIS Bill was brought against an Executor of an Executor, Money placed out at Interest, and called in by an Executor without any Cause; he shall pay Interest for it.
to have an Account of the real and personal Estate of *Tho. Haslewood*, the Father of the Plaintiff, devised to the Father of the Defendant, in Trust for the Plaintiff and his Heirs, and made the said *Thomas* his Executor, who made the Defendant his Executor, and died.

The Defendant offered to account, but the chief Question was, whether he should pay *Interest* or not, and as to that Matter it was suggested, that the Money of the Plaintiff's Father was well placed out upon good Securities, and unnecessarily called in by the Defendant's Father, on a Pretence to pay Debts, but otherwise converted.

The Court declared, if upon Examination before the Master that should appear to be true, then Interest shall be paid for what was unnecessarily called in, but no Interest for the Rents and Profits of the real Estate.

Sir Thomas Davis and others, Plaintiffs.

Rowland Dee and others, Defendants.

Where a
real and
personal E-
state are
both made
subject to
the Payment
of Debts, if
the personal
Estate is
sufficient,
the real shall be discharged; but if such Estate is expressly charged with the Payment of Debts,
in such Case, so long as it stands charged, it will draw in the personal Estate to account at a-
ny Time.

THIS Bill was, to have an Account of the real and personal Estate of *Cha. Everard* deceased, and to have the same applied towards the Satisfaction of a Debt of 1472 *l.* principal Money and Interest due to the Plaintiff from the said *Everard*; suggesting that his real and personal Estate of great Value, came to the Hands of the Defendants as *Administrators* or *Executors* of him the said *Everard*.

The Defendant pleads the Statute 21 *Jacobi* of *Limitation of Actions*; and that there was a former Suit brought in this Court in the Year 1674, by the same Plaintiff, and to the same Purpose as this Suit; and that the Defendant in that Suit pleaded the same Statute of Limitation of Actions, which Plea was allowed as to the personal Estate, but disallowed as to the real Estate.

And likewise the Defendant farther pleaded to this present Bill, that long before it was exhibited, (*viz.*) in the Year 1670, there was a Suit in the *Prerogative Court* against the Defendant and *Charles, Anne* and *Mary Everard* Infants, by *Charles Cornwallis* their Guardian, in which Suit the Administration granted to the Defendant was repealed; and thereupon Administration *de Bonis non, &c.* with the Will annexed, was granted to the said *Cornwallis*, in Trust for the said *Charles, Anne* and *Mary Everard*, who are no Parties to this Suit; all which the Defendant now pleads in Bar to the Demand of the Plaintiff.

The Court decreed, that where a real and personal Estate are both subject to the Payment of Debts, in such Case, if the personal Estate is sufficient, there ought to be no farther Account of the real Estate; but if the real Estate be expressly charged with the Payment of Debts, then so long as it remains subject to the Payment thereof, it will *draw both Estates to an Account at any Time*; because the personal Estate ought in the very Nature of the Thing to go in Ease of the real Estate; and therefore the Statute of Limitations cannot interpose, or be any Bar to an Account thereof; and therefore over-ruled the Plea, as to the Statute of Limitations.

But as to the other Part of the Plea, (*viz.*) the Want of proper Parties to the Bill, it was ordered that the Plaintiff might amend without Costs.

Thomas Coleman, *Plaintiff.*

Thomas Coleman *and* Quinborough *his Wife,*
and Edward Coleman *by the said* Quinborough
his Mother and Guardian, and the Master,
Fellows and Scholars of St. Benner's College in
Cambridge, *Defendants.*

E*Edward Coleman*, by his last Will, devised to the Plaintiff An Annuity devised and charged on that Part of his Estate which should remain unfold after Debts and Legacies paid; and it appearing that there was Part of the Estate sold to pay those Debts and Lagacies, amounting to 400*l.* and that the same were paid, and an Overplus remained in the Hands of the Defendant, as well of that arising by the said Sale, as the Rents and Profits which he had received out of the other Part of the Estate which was unfold; the Plaintiff exhibited his Bill for the Payment of this Annuity.

20*l.* per Ann. remained after the Debts, &c. were paid: Decreed that the same, and the Rents of what is unfold, shall both be applyed to discharge this Annuity.

And it was decreed, that the Overplus of the Money of that Part of the Estate for which it was sold, as well as the Rents of the other Part unfold, should be both applyed to the Payment of this Annuity; and that the Defendant should account accordingly, and pay the Overplus as far as it will go, for that is Assets of the Testator's Estate; and what that falls short, to be supply'd out of the other Part of the Estate unfold, *with Costs.*

Term. Sanct. Mich.

32 Car. 2. Anno 1680.

Anne Rogers, *Plaintiff.*

Warwick Bampffield, John Winter *and* Thomas Warre, *Esq;* *Defendants.*

Henry Rogers being seised in Fee of a real Estate to the Value of 1200*l.* *per Annum*, and being possessed of a great personal Estate, by his Will dated 8 May 1672, devised to his Executors and their Heirs all his real Estate, in Trust that out of the *Rents and Profits, &c. thereof, they should pay his Debts and Legacies, &c.* and afterwards in Trust for his Kinsman *Alexander Popham* for Life, Remainder to his first Son, and other Remainders over; and made the Plaintiff *Anne* and the other Defendants Executors.

Afterwards the said Testator by a * *Codicil* dated 1 September 1672, declared his Mind to be, that all such Sums of Money which were left in his Closet, in his House in *Cannington, should be disposed by the Plaintiff Anne amongst such poor People, and in such Manner as he had directed her*; and soon after the making this *Codicil*, he delivered the Keys of his Closet, where the Money was, to the said Plaintiff *Anne*, and not long after he died at *Westminster*.

*A Codicil is defined in the Civil Law, to be an Act which contains Dispositions in Prospect of Death, and made without the Institution of an Executor. And whether a Codicil is made at the same Time, or before or after the Will, or whether the one mentions the other or not; yet the Codicil is considered as Part of the Will. *Dom. 2. Vol. 140.*

The Defendants, the next Day after the Testator was buried, pretended that the Money in the Closet was subject to pay his Debts, and would have persuaded the Plaintiff to deliver the Keys of the Closet to them; which she refusing, and withall alledging, that by the *Codicil* it was bequeathed to her upon the Trust as aforesaid, they threatned to break

break open the Door; thereupon it was open'd by the Plaintiff her self, where there was found 7500 *l.* of which the Defendants possessed themselves, or the greatest Part thereof; and now the Plaintiff exhibited this Bill against them, that they might repay the same to her, in order to perform her Trust.

The Defendants confess the Will and *Codicil*, and the Opening the Door of the Closet, and the Money there found; but say that the Estate of the Testator at *Cannington* determined by his Death; and that several Persons claiming an Interest, and demanding Possession of the House, both the Plaintiff *Anne*, and these Defendants in order to secure the Money consented to a Distribution thereof, for the Payment of Legacies, of which the Defendant *Winter* received 1800 *l.* for Legacies given to him and his Children; the Defendant *Bampfild* receiv'd 1800 *l.* for Legacies given to him, and to his Sister the Lady *Drax*, and the other Defendant *Warre* received 2500 *l.* for a Legacy devised to him, &c.

And now the said Defendants by their Counsel insist, that the Plaintiff having agreed to the aforesaid Distribution, it ought to oblige her; and if she hath by this Means wasted any of the Assets of the Testator, which were directed to be employed in another Manner, she ought to make it good, and not to draw back the Money from the Defendants, and make them resort to the Rents and Profits of the real Estate for their respective Legacies.

And the Counsel for the Plaintiff *Anne* argued, that it was only said but not proved, that she consented to any such Distribution as the Defendants had alledged; and that admitting she had consented, yet since this Money was a specifick Legacy, it was a Breach of Trust in her to consent, and ought not to defeat what was intended by the Testator by his said *Codicil*.

The Court decreed the Repayment of the several Sums by the said Defendants to the Plaintiff *Anne*, and that the same together with the rest of the said 7500 *l.* which is in the Hands of the Plaintiff, shall be applyed by her according to the Direction and Intention of the *Codicil*, she giving Security for that Purpose, &c.

William Wintle and Margaret his Wife, Harriot Washborne and Rachell his Wife, Plaintiffs.

Barney Carpenter and John Pisburgh, Defendants.

Decree of a Commission to set out the Boundaries, so that sixty Acres of Copyhold Lands might be distinguished from the Freehold of other Persons.

William Carpenter being seised in Fee of the Copyhold Lands, but the Court-Rolls being mislaid or lost, and no Body remembring the Admittance of George Carpenter his Father; he the said William devised the same to his Grandson Robert Carpenter, who Anno 3 Car. 1. by Deed and Fine conveyed the said Lands as Freehold, to Edmund Wright, who by the like Conveyance sold the same to one Tickeridge and his Heirs.

Afterwards Tickeridge commenced a Suit against Robert Carpenter, on the Covenants between him and Wright; and at length it was agreed between them that Robert Carpenter should pay 30*l.* to Tickeridge, which was to be applied as a Fine to the Dean and Chapter of Westm. (Lords of the Manor) to admit Tickeridge and his Heirs to this Copyhold; and that Carpenter should appear at the next Court to make a Surrender; but before that Time Tickeridge died, and his Son being then about a Month old, enjoyed the Lands for forty-eight Years afterwards without any Admittance, and then (as the Defendants pretend) he devised the said Lands to them the said Defendants and their Heirs, and did not give the Plaintiff Margaret, who was his Sister, nor Harriot Washborne, who was his Eldest Sister's Son, any Thing by his said Will.

Afterwards a Court was held by the said Dean and Chapter, and then the Homage presented the Forfeiture of this Copyhold being sold as Freehold by Fine at Common Law; and in Consideration of a Fine paid by the Plaintiffs, granted the same to them and their Heirs; but the said Copyhold lying intermixt amongst other Lands of the Defendants, they to confound the same, did digg up the Boundaries, so that the Copyhold could not be distinguished from the

the *Freehold* Lands of the said Defendants and other Persons; therefore the Plaintiffs exhibited their Bill, to preserve the Testimony of ancient Witnesses, and to have Commission to set out the Buttals and Boundaries of the said Lands.

The Defendants set forth the Will of *Robert Carpenter*, by which the Lands were devised to them and their Heirs, and set forth that the Debts of the said Testator did amount to near the Value of the Lands; and that they believe the Title of the Plaintiffs under the *Dean and Chapter, &c.* is not good, for that the *Premisses have been enjoyed as Freehold* for sixty Years and more, and have, during all that Time, passed by *Deed and Fine* as *Freehold* Lands, and ought to be so enjoy'd.

The Plaintiffs reply, that since the Bill exhibited, they have obtained a Verdict on full *Evidence*, and Judgment in *Ejectment*; and that the Defendants at the Trial gave the aforesaid Will, and such other Matters which they had, in *Evidence* to the Jury, so that their Title is now become void both in Law and Equity.

The Court decreed a Commission to set out and distinguish sixty Acres of Copyhold Lands, and for that Purpose *Witnesses* to be examined to be produced by either Party, or to make Use of any Depositions already taken in this Cause, or the *Deed* or *Will, &c.*

Morgan and others, Plaintiffs.

Scudamore, Defendant.

*S.C. more fully reported in
Chanc. Rep. 8. 2 Vol. 17. 134.
11th. App. p. case 743.*

*See 1. 61a. Two Years
Rep. 53. 54. 90. Value of a
2. 11. 12. 76. Copyhold
of Land of was decreed
to be a rea-
sonable
Fine, to be paid to the Lord upon an Admittance.*

*Grafton v. Horton 3. Bro. Cas. in Parl. 269. & case of v. 11. 12. 76. 135.
before Lord Hardwicke
Easter 12. Geo. 2.
See also 2. Term
Rep. 740.*

THIS was, a Bill brought by Copyholders of the Manor of, &c. against the Defendant Lord of the Manor, to be admitted to their Copyhold Tenements, paying a reasonable Fine.

Fine, to be paid to the Lord upon an Admittance.

The Court decreed two Years Value of their respective Tenements to be a reasonable Fine; and that they be admitted accordingly, paying the said Fine.

Mary Morgan, Plaintiff.

Dame Elizabeth Morgan, Defendant.

Where a Legacy shall be extinct, the Estate out of which it issued being determined.

SIR Anthony Morgan, Father of the Plaintiff Mary, being seised of the Lands in the Bill, &c. which in the late Usurpation were sequestered to Oliver St. John, of whom Sir Anthony purchased them for 3000*l.* which Money he borrowed of one Coney, and for his Security, Sir Anthony demised the said Lands to the said Coney for twenty-one Years at a Pepper-Corn Rent, and he redemised them to Sir Anthony for twenty Years and eleven Months, at and under the yearly Rent of 600*l.* for the first seven Years; and at the Rent of a Pepper-Corn for the Residue of the said Term of Years.

Sir Anthony in October 57, made his Will, and devised to the Defendant 100*l.* and all his Plate, Household-stuff, and Quick Stock, &c. and to his Executors all his Estate whatsoever, in Trust to pay his Legacies; and that they should dispose 1000 Marks to such Person, and for such Use as the Defendant Elizabeth should appoint, &c. and for want of such Appointment to the Plaintiff Mary at her Age of 21 Years, or Day of Marriage, and made Noell and Bagshaw his Executors.

Sir *Anthony* paid the 600*l.* *per Annum* for the first *seven Years*, according to the *Redemise* which was then surrendered to be cancelled; and afterwards by the Restoration of the King, Sir *Anthony* was reinvested in *his said Estate*, and soon after died without Issue Male leaving the Plaintiff *Mary* his only Daughter; so that all his Lands came to the Right Heirs of *Thomas Morgan*, pursuant to a former *Settlement*, and nothing was left to satisfy the *said thousand Marks*, the *Redemise* to him for *twenty Years* and *eleven Months*, out of which the same was specifically to issue according to the Will, being now determined and extinguished.

That the Defendant *Dame Elizabeth* prevailed with the Executors to renounce, and in Consideration thereof she *agreed* to give a true Account in Writing to the Plaintiff (her only Child) at the Age of *twenty-one Years* of all the Profits which she should make after the Death of the said Testator, and pay the same to her; thereupon she administered and possessed her self of the Estate and received the Profits, but *exhibited* no *Inventory*; and in *August 1671*, the Plaintiff attained her Age of *twenty-one Years*, and then she *required the Defendant* to account, which she refusing, the Plaintiff *exhibited* a Bill to compel her; &c.

The Defendant *confessed* all the Matters alledged in the Bill, but claims the *thousand Marks*, and demands the Judgment of the Court whether the personal Estate of Sir *Anthony* the Testator ought to stand charged with the Payment thereof, though the Demise and Redemise were expired.

The Court was of Opinion, that the said thousand Marks was wholly fixed, and had its Dependence on the said Leases which being expired by the King's Restoration, and by the Decease of Sir *Anthony*, the said Legacy was extinct and gone.

Therefore it was decreed, that the Defendant should account for the personal Estate of the Testator, and for all Money put out by him at Interest, and which afterwards came to her Hands from his Death till the Plaintiff came to the Age of *twenty-one Years* (except the Plate, Household-stuff, &c.) and to pay to the Plaintiff Interest for what she (the Defendant) hath received since the Plaintiff came of Age, and before, from the respective Times the same were received; and that the Surplus, after Debts and Legacies paid, shall go to the Plaintiff at such Times and Place as a Master shall appoint.

That the Defendant produce all Bonds, Specialties, and other Writings which ever came to her Possession, and concerning the said Testator's personal Estate, and deliver the same upon Oath to the Plaintiff, and give her a sufficient *Letter of Attorney* to sue for, receive and recover the Money thereon due in her Name with a Covenant not to revoke the said Letter of Attorney; and the Plaintiff at the same Time to covenant with the Defendant, to indemnify her from all Costs and Damages which may happen to her by Reason of any such Suit, &c.

Elizabeth Tanner *Widow*, and Elizabeth Tanner
the younger, *Plaintiffs*.

Jasper Chapman, *Esq*; and Jasper Chapman,
Factor, John Powell, *Esq*; Thomas Birkly and
John Rouse, *Gent. Defendants*.

Mortgage of
Lands, and
afterwards
the Mortga-
gor became
a Bankrupt;
the Title of
the Mortga-
gees shall
not be im-
peached by
the Statute;
and decreed
that other
Creditors
shall come
in, payin g
their Con-
tribution-
Money.

A Commission of Bankruptcy being issued against *Nathaniel* and *Jonathan Tanner*, the Sons of the Widow *Elizabeth Tanner*, she as Executrix to her late Husband *William Tanner*, exhibited her Bill to be let into the said Commission as a Creditor upon a Bond of 500*l.* entered into by the said *Nathaniel* to *William Tanner*, conditioned to pay unto him 250*l.* and Interest; and that the other Plaintiff *Elizabeth* may be admitted as a Creditor on a Bond of 100*l.* given by the said *Nathaniel* to one *Weare* for 50*l.* and Interest which she paid, and likewise that the Plaintiffs might be admitted Creditors for their Debts, and to have the Writings which concern the Widow's Jointure, and two Mortgages to be delivered up to them the said Plaintiffs; the one made by the said *Nathaniel* to his Father *William* aforesaid, for securing the Payment of 500*l.* and the other made by *Jonathan* to the Plaintiff *Elizabeth* the younger for 300*l.* and that the Jointure of the Widow and the said Mortgages may be confirmed by this Court, &c.

The Defendant *Chapman* the Factor, agreed to lend *Nathaniel* and *Jonathan* 200*l.* for the Payment of their Debts, who, to secure the Repayment thereof, agreed to mortgage
some

some Part of the Lands in Question, in which the Widow Plaintiff was to join; and thereupon the Writings were delivered to the other Defendant *Birkly* to draw a Mortgage, but he delayed to do it, and refused to deliver back the Writings, and instead thereof, sued out a Commission of Bankrupt against *Nathaniel* and *Jonathan*, in which he named the other Defendants Commissioners, who threaten to sell the Estate to *Chapman* the Factor at an Under-Value, and to pay the Money to such Creditors as they please, and refuse to admit the Plaintiffs as Creditors, but threaten to exclude them; and therefore they exhibit this Bill, that they may be admitted into the said Commission, &c.

The Defendant *Chapman* the Factor says, that *Nathaniel* owed him 200*l.* and that it was proposed, that he the said *Chapman* should make it up 1200*l.* and pay it to the said *Nathaniel*, who thereupon was to mortgage his Estate for securing the Repayment thereof to him; and the Plaintiff was to give collateral Security, that the same should be free from Incumbrances; and thereupon the Writings were delivered to *Birkly* to draw the Mortgage, who not approving the Security, he with the Consent of the said *Nathaniel* was to keep the Writings till he paid the said 200*l.* to *Chapman*; but he afterwards sent for them, which the Defendant refused to deliver.

In *June* 1675, the Commission of Bankruptcy was sued out, and sometime after the Commissioners met, and appointed the Creditors to pay two Shillings in the Pound to carry on the Execution thereof; and then they assigned the Estate of *Nathaniel* and *Jonathan*, and the Reversion of the Widow's Jointure to the Defendant and others, for the Benefit of the Creditors; and therefore insist, that the Writings may remain with him for their Benefit, and that the Plaintiffs may not be admitted as Creditors, for that the said Commissioners have proceeded duely, and adjourned the Commission to the Plaintiff's House, where they were admitted Creditors for such Debts as then appeared.

The Court decreed the Plaintiffs to hold and enjoy their Estates under the Jointure and Mortgages set forth in their Bill, and that the same shall not be impeached by the Commissioners or Assignees of the Statute of Bankruptcy, or otherwise; and that the Plaintiffs shall be admitted into the said Commission as Creditors, and shall have Time to come in and prove their Debts, and to pay their Contribution, till the 3d of *January* next, and then to be admitted.

But the *Assignees* of the Commission are to keep the Writings which came to the Possession of the Defendants, that the same may be produced to any Purchaser, or otherwise as Occasion shall require, and as this Court shall direct; no Costs on either side.

Henry Needler, *Gent. and Joanna his Wife,*
Plaintiffs.

Thomas Kendall, *Esq; and Mary his Wife, and*
Mary Hallett, Defendants.

Appeal to
the House
of Lords
from a De-
cree in
Chancery;
and upon

John Hallett being seised in Fee of the Lands in the Bill of the yearly Value of 400 *l.* had Issue two Daughters, the Defendant *Mary*, and the Plaintiff *Joanna*, to whom, as Coheirs, the said Lands descended upon the Death of their Father.

the Petition of the Appellants to examine Witnesses in the Cause, it was rejected, and the Petition dismissed; and now the Appellants bring a Bill of Review; and it was decreed, that the Defendants should answer and demur.

Thomas Kendall and *Mary* his Wife, when *Joanna* was about 11 Years old, exhibited their Bill against her, setting forth their Title to the Premises, and the said *Joanna*, by *Mary* her Mother and Guardian, answered and set forth her Title as Coheir, &c. and the Cause being heard 25 *Car. 2.* and it appearing to the Court, that it was their Father's Intention, that *Mary* should have the *Manor of K.* and *Joanna* the *Manor of E.* the same was decreed accordingly to them and *their Heirs* respectively.

But *Kendall* and his Wife, since the said Decree, have entered on the Premises, and by some secret Conveyances have intricated the Title of the Plaintiff *Joanna*, to prevent her from enjoying her Moiety, when her Title was not in Question in that Cause; the only Point being *whether the Defendant Mary Hallett* had an Estate for Life in the whole, which was opposed by the then Defendant *Joanna*; and the Cause was carried on by Collusion without any Defence, and not one Witness examined, so that the said Decree ought not to be binding and conclusive to her Interest, but to be set aside as erroneous and inconclusive, and therefore the Plaintiffs have now brought a *Bill of Review* to reverse the said Decree.

The

The Defendant *Kendall* and his Wife plead, that *Joanna*, when Sole, by *Mary her Mother*, appealed to the House of Lords from the said Decree, setting forth the same Matters of which they now complain; and that if the Witnesses were not examined, nor any Defence made, it was through their own Negligence; but that in such Case they ought to have brought their *Bill of Review* before they appealed.

And the said Defendants say, that the Question before the House of Lords, whether the House shall examine any Witnesses, upon the Petition of the Appellants for that Purpose, was resolved in the Negative; and on the Petitioners Motion the Cause was heard on the Merits 20 May 1675, and both the Petition and the Appeal were dismissed.

Therefore the Defendants demand the Judgment of this Court, whether they shall make any farther Answer; but the Counsel for the Plaintiff insisted, that the Cause was not heard and determined in the House of Lords upon the Merits, but the Petition to examine Witnesses was dismissed, which Dismission ought not to stand in the Plaintiffs Way, to hinder them from the Benefit of their *Bill of Review*; and prayed that the same might be set aside.

The Court decreed, that *Kendall* and his Wife shall either answer the *Bill of Review*, or demur on the Errors therein contained, without Costs on either Side, and the Benefit of the Order of Dismission by the Lords in Parliament, is saved to the said Defendants.

Thomas Smeaton, *Plaintiff*.

John Povey, Remigius Vanleemput, Nicholas Vanleemput and Mary his Wife, James Magnes, Francis Cousin, and Richard Samuel and others, *Defendants*.

Charles Smeaton, the Father of the Plaintiff, by his last Will dated in November 1661, devised his said Lands, called *Welbourn* and *G. in Yorkshire*, to *Ruth* his Wife, and to the Defendant *Povey*, and their Heirs, in Trust to sell the same to pay his Debts, and to raise Portions for his younger Children, and soon after died.

Before

Before the said Lands were sold *Ruth* died, and *Povey*, the surviving Trustee, sold *Welbourne* for 2200 *l.* which, as it was suggested, was more than would pay the Debts; and he also received the Profits of the Lands in *G.* for several Years.

Remigius Vanlemputt lent the said *Povey* 500 *l.* towards the discharging the Debts, as he pretended, for the Repayment thereof with Interest, the Plaintiff *Thomas Smeaton* joined with him in a Mortgage of the unsold Lands in *G.* to the other Defendants *James Magnes, &c.* in Trust for the said *Remigius, &c.*

The Mortgage being forfeited, the said *Remigius* and his Trustees, and *Povey*, on Pretence of a Marriage between the Defendant *Nicholas*, the Son of *Remigius*, and *Mary* the Daughter of *Povey*, settled the Premises on the said *Nicholas* and *Mary* his Wife, and their Heirs, in Breach of the Trust reposed in *Povey*, tho' the Plaintiff was intitled to the Equity of Redemption; therefore he exhibited this Bill to redeem, &c. and to set aside the said fraudulent Settlement.

This being the Truth of the Case, the Court decreed, that the Plaintiff should redeem, if *Povey* had not paid as much or more to discharge the Debts of the Testator, than the whole Estate devised by him for that Purpose was worth, of which the Master was to take an Account, and if he found *Povey* indebted to the Testator's Estate, then he was to take an Account of the Mortgage Money, and the Interest, deducting the Profits; and upon the Plaintiff's Paying to *Nicholas* and his Wife what should be found due on the said Mortgage, it was decreed, that they should reconvey the Premises to the Plaintiff and his Heirs, freed of all Incumbrances by them, &c.

The Master found *Povey* indebted to the Testator's Estate 2600 *l.* and reported 636 *l.* due on the Mortgage, which Report was confirmed, and the Money ordered to be paid on a certain Day, and the Settlement set aside, &c.

Charles Lewis, *Plaintiff*.

George Lewis, *Defendant*.

E*dmund William Lewis*, being seised of the Lands in the Bill mentioned, did, on the Marriage of *Anne* his Daughter with Sir *William Lewis*, settle the same on the said Sir *William* and *Anne*, and the Survivor of them for Life, Remainder to the Heirs of the Body of the said *Anne*, who had Issue *Edward*, *Thomas*, the Plaintiff *Charles Lewis*, and *William*, and the Defendant *George Lewis* their youngest Son.

Where a Deed or other Evidence is suppressed by either Party, a Court of Equity will always presume a Title against him who suppressed it.

Afterwards Sir *William* and *Anne* his Wife, and *Edward* their eldest Son, joined in a *Fine*, and by Deed declared the Uses to the said Sir *William* and *Anne*, and the Survivor for Life, Remainder to *Edward* and the Heirs Males of his Body, Remainder over, &c. which Deed was delivered by the Plaintiff to the Defendant *George Lewis*, that it might be shewed to one *Edmund Lewis*, but 'tis now detained from the Plaintiff, who thereupon exhibited a Bill in the grand Sessions; and it appearing to the Court that there was such a Deed, and that the Defendant had confessed it, and that it was once in his Possession, the Plaintiff obtained a Decree that the Defendant should bring the Deed into Court, which he refusing to do, was prosecuted upon Contempts to *Sequestration*; and now the said Defendant in that Cause brought a Bill of Appeal in this Court, denying that ever he had such a Deed as the Plaintiff in that Cause claimed.

But it appearing to the Court, that he had once confessed he had such a Deed in his Possession, the Lord Chancellor declared, that where the Evidence is suppressed by either Party, a Court of Equity will always presume a Title against the Person suppressing it, until the Evidence be produced; and that the Decree of the Court of Grand Sessions was made upon just Grounds, and therefore ordered this Bill of Appeal to be dismissed; and the Counsel for the Plaintiff insisting, that by Colour of this Bill of Appeal, and upon a Pretence, that the Decree of the Grand Sessions could not be warranted in Equity,

* Where the Defendant was prosecuted upon Contempts to a Sequestration, and that removed upon a false Pretence, the Plaintiff shall have a Writ of Restitution, and the Defendant shall account to him for what he had received.

Therefore the Court ordered, that the Master should take an Account of the Profits received by the Defendant since he was restored, and what shall appear to be received by him, that he forthwith pay it to the Plaintiff; and that he be restored to the Possession of the Premises; and that a Writ of Restitution shall issue for that Purpose; and that he shall be put in the same Condition he was in, at the Execution of the Decree of the Grand Sessions; and in the mean Time the Signing and Inrolling the Dismission of the Bill of Appeal to be suspended.

Robert Vaulx, Robert Tyrrell and George Whitehead, *Plaintiffs.*

Henry Shelley, Leonard Thompson and John Thompson, *Defendants.*

A Verdict and other unjust Proceedings in an inferior Court set aside, and the Plaintiff in that Court ordered to pay all the Costs there and here.

Margaret Hall, Widow, having Issue by her first Husband one Son called *Thomas Hall*, and being seised in Fee of the Lands in the Bill, she married the Plaintiff *Thomas Vaulx*, who enjoyed the said Lands during her Life, and she dying in the Year 1670, he, by the Custom of *Gavelkind*, was intitled to a Moiety thereof, during his Widowhood, by the Curtesy, &c. and *Thomas Hall*, her Son, was intitled to the other Moiety, who being an Infant, the Plaintiff *Vaulx* was appointed his Guardian, and thereupon got Possession of the Whole, and educated the said Infant, who died about a Year after his Mother, and without Issue.

The Plaintiff being thus in Possession, one *Ruth Shelley* and *Peter Gerrard*, in the Right of *Susan* his Wife, pretending themselves Cousins and Coheirs to the said Infant, demanded Possession of the Premises; and thereupon the Plaintiff not knowing his own Title to a Moiety, as Tenant by the Curtesy, &c. attorned Tenant to them.

Afterwards the Defendant *Henry Shelley*, as Agent for his Grandmother *Ruth*, treated with the Plaintiff *Vaulx* for the Purchase of *Ruth's* Interest; and thereupon it was agreed, that *Vaulx* should pay 240 *l.* for the same, upon Condition that *Henry Shelley* should within six Weeks, &c. produce a sufficient Authority from the said *Ruth* for the Sale thereof; and all the Writings concerning the Premises, for Counsel to peruse, and to be satisfied in the Title; and that a good Conveyance thereof might be made to the Plaintiff, who expressly alledges that he was not to pay the said 240 *l.* until such Conveyance was executed.

The Plaintiff *Vaulx* not hearing from *Shelley* several Months, took himself to be discharged of this Agreement; and afterwards being informed of his Title to a Moiety as *Tenant by the Curtesy*, he brought an Ejectment, and recovered a Verdict for the same before the *Lord Chief Justice Hale* at the Assises in *Kent*; and having some Concerns at *Berwick upon Tweed*, he sent the said *Henry Shelley* thither to collect the Rents of his Tenants, which he did, and the said *Shelley* collected 60 *l.* and was indebted to the Plaintiff *Vaulx* 15 *l.* for a House, and he often sending to him to account, but receiving no Answer, *Vaulx* the Plaintiff went to *Berwick*, and there he was arrested by the said *Shelley*, by Process out of *Berwick* Court for the said 240 *l.* and tho' he tendered a Plea upon Oath to the Jurisdiction of that Court, yet it would not be allowed, and afterwards he brought an *Habeas Corpus*, &c. and that was not obeyed, but he was committed to Prison for Want of Bail, and afterwards the Defendant *Leonard Thompson*, by Combination with *Shelley*, was accepted to be his Bail for 240 *l.* tho' he was a very poor Man; and then *Shelley* declared and got a Verdict and Judgment against *Vaulx* for 240 *l.* in *Berwick* Court.

Vaulx taking it to be a Kindness that *Leonard Thompson* was Bail for him, procured the other Plaintiffs, *Whitehead* and *Tyrrell*, to be bound to the *Thompsons* (the Defendants) in a Bond of 480 *l.* to indemnify *Leonard Thompson* from being Bail, as aforesaid, who soon after rendered himself to Prison, and then he put the said Bond in Suit; and thereupon *Vaulx* the Plaintiff brought a *Writ of Error* on the Judgment in *Berwick* Court, but that was disallowed, so that he was prosecuted for the 240 *l.* and *Whitehead* and *Tyrrell* upon the Bond for 480 *l.* and therefore they exhibited this Bill to be relieved, and that *Shelley* might pay the 60 *l.* and 50 *l.* to the Plaintiff *Vaulx*.

The Defendant *Shelley* in his Answer sets forth, that he had a Title to the Interest of *Ruth Shelley*, and that the 240 *l.* was

to be paid before any Conveyance was to be executed thereof; that the Conveyance was accordingly tendered to *Vaulx* within the Time agreed on; and doth not deny the Proceedings in *Berwick* Court.

The two *Thompsons* say they are Strangers to the Agreement between *Vaulx* and *Ruth Shelley*, but that they were Bail for him, as aforesaid, and that *Leonard* was in Execution for several Months, and expects his Damages, &c.

Upon the Hearing this Cause, the Counsel for the Plaintiff insisted, that *Henry Shelley* ought not only to bear the Costs and Damages of the Plaintiff, but of the said *Leonard Thompson*, because he was the Wrong-doer in arresting the Plaintiff and imprisoning his Bail on a Verdict and Judgment so unjustly obtained, contrary to all the Courts and Rules of Law; the the Judge of that Court in *Berwick* having disobeyed all the Process of the Courts at *Westminster*, as aforesaid; and had likewise disobeyed the Order of this Court, by which the Plaintiff was commanded to bring the 240 *l.* into Court, and then *Leonard Thompson* to be discharged out of Execution, but he was still kept in Custody in Contempt of that Order, by Reason whereof his Damages were increased; and therefore after he was discharged he brought an Action against the Plaintiffs upon a *Quantum damnificatus*, and hath recovered a Verdict and Judgment for 80 *l.* Damages, &c.

The Court decreed, that the Judgment in *Berwick* Court should be set aside, and a perpetual Injunction against the same, and the Master to tax Costs for the Plaintiff *Vaulx*, in Respect to that Prosecution and Recovery in that Court, and likewise his Costs in this Court against *Shelley*; and decreed *Thompson's* Damages to be paid likewise by the said *Shelley*, with his Costs both at Law and here, and the 240 *l.* to be taken out of Court by the Plaintiff *Vaulx*; and that *Leonard Thompson* deliver up the Bond of 480 *l.* to *Whitehead* to be cancelled, and to release all Actions brought thereon, and likewise the Verdict by him obtained for 80 *l.* Damages, &c.

Nicholas

Nicholas Paine and Elizabeth his Wife, Plaintiffs.

Robert Bromfall, Thomas Bromfall, Alice Bromfall Infants, by John Peck their Guardian, and John Peck, and Mary Killett, Widow, Defendants.

JOHN Bromfall, late the Husband of the Plaintiff *Elizabeth*, Bill for a Jointure, and a third Part of the personal Estate of her Husband as a Freeman of London, being seised in Fee of the Lands in the Bill, &c. did, by Indenture of Bargain and Sale 29 April 1660, made between him, of the one Part, and *John Peirce* and the Defendant *Robert Bromfall*, of the other Part, settle the Premises in Jointure on the Plaintiff *Elizabeth* his then Wife.

But *Robert Bromfall* the Defendant hath got the Possession of the real Estate, and delivered it up to *Alice* the Daughter of *John* by a former Wife, and hath likewise possessed himself of the personal Estate of *John*, tho' by the Custom of *London* the said Plaintiff *Elizabeth* ought to have a third Part thereof, as she is the *Widow of a Freeman*.

That *John Peck* claims a Title by Virtue of a Mortgage, which he pretends is precedent to the Marriage-Settlement, but refuses to discover the Deed; therefore the Plaintiffs have exhibited a Bill for a Discovery of the said Deed and Settlement, and Incumbrances and the yearly Value of the Lands, together with the Value of the personal Estate; and that the Plaintiff *Elizabeth* may have a third Part thereof, and be let into her Jointure.

Robert and *Alice Bromfall* answer and say, that *John* was seised of the Reversion in Fee of two Thirds of the Premises, expectant upon the Death of *Elizabeth Wilsmore*, who survived *John*; and the other third Part, after the Death of the said *Wilsmore*, descended to *Alice*, as the only surviving Daughter and Heir of their Mother, the first Wife of the said *John Bromfall*.

They believe no such Marriage-Settlement was made by *John*, but that he left the said *Alice* and two more Daughters by his first Wife, very young at the Time of his Death; that the Plaintiff *Elizabeth*, their Mother in Law, taking no Care of them, the said *Robert* their Uncle entered and received the Profits of the real Estate, being 38 *l. per Annum*, out of which he paid Taxes and the Interest of 200 *l.* principal

cipal Money; and the Residue was towards the Maintenance of the Children.

And as to the personal Estate, *John*, by Deed-Poll dated in *January* 1660, in Consideration of 140 *l.* sold the same to *Elizabeth Wilsmore*, there being so much due to her from him; and that the said *Wilsmore* is dead, and he is Executor, and by Virtue thereof intitled to the said personal Estate.

Thomas Bromfall claims under an Assignment of a Mortgage made by *John Bromfall* of some Part of the Premises for securing the Repayment of 100 *l.* and Interest, and the Defendant *Mary Killett* claims under a like Mortgage for the like Sum.

And *John Peck* says, he was chosen Guardian by *Alice*, and that he hath all the Deeds and Writings concerning her Title to the Premises, which he keeps to defend the same, and that he hath taken the Accounts of *Robert Bromfall*, and found that he had expended 50 *l.* more than he received.

The Court, upon hearing this Cause, was satisfied that the Plaintiff, in Right of his Wife *Elizabeth*, was well intitled to her Jointure made by her first Husband, but subject to the said Incumbrances.

Therefore ordered *Robert Bromfall* and *John Peck* to account for the Rents and Profits since the Death of *Elizabeth Wilsmore*, allowing for Interest-Money, Repairs, Taxes, and what hath been expended towards Maintenance of the Children; and what shall appear to remain afterwards in their Hands, shall be applied towards the Discharge of the said Moragages, so far as the same will reach.

That *Alice Bromfall* paying two Thirds, and the Plaintiff *Paine* and his Wife paying the other Third, what shall appear to be due on the said Mortgages, the same shall be reconveyed to the said *Alice* and her Heirs, free from Incumbrances; and the Plaintiff and his Wife, on Redemption of the Premises as aforesaid, shall enjoy the other third Part as the Jointure of the said *Elizabeth*, during her Life.

And that, if *Alice* should refuse or neglect to redeem at a Time to be appointed for that Purpose, then the Plaintiffs shall be at Liberty to do it, and shall hold the same mortgaged Lands till they are satisfied both Principal and Interest, &c.

George Skapholme, *Plaintiff.*

Theophilus Hart *and* Margaret Hart, *Widow, and*
Warner Hart, *Defendants.*

M *Attbew Batson*, late of *London*, Skinner, being seised of Copyhold Lands in *Yorkshire* of the yearly Value of 50 *l.* per Annum, surrendered the same to the Use of his Will, and about 19 *December* 1664, devised the said Lands to *John Holgate* and his Heirs, and soon after died; and before the said *Holgate* was admitted, he died an *Infant* Intestate, and without Issue, so that the Premises being in Nature of *Gavelkind*, descended to *John Skapholme*, and to the Plaintiff *George* his Brother, as Cousins and Heirs of the said *Holgate*, and soon after the said *John Skapholme* died, so that the Whole descended to the Plaintiff, who ought to enjoy the same.

actually laid out in recovering the Estate.

But being in his Minority, he did not enquire into his Title, till about 3 Years past he applied himself to one *Hart* a Counsellor at *Gray's-Inn*, who undertook to recover the said Lands for the Plaintiff, but would not proceed unless the Plaintiff would give him a Bond of 1000 *l.* Penalty, conditioned to surrender one Moiety to him and his Heirs, when recovered, which Bond was drawn by the said *Hart*, and tendered by him to the Plaintiff to execute, and which at the Persuasion of the said *Hart* was executed accordingly.

Afterwards *Hart*, before he recovered the said Lands, made his Will, and devised the said Moiety to *Warner Hart* (the Defendant) his Son and Heir, and made the other Defendants Executors, and died; who pretend, that their Testator recovered the Estate, and threaten to put the Bond in Suit; and therefore the Plaintiff exhibited this Bill to have the said Bond delivered up, and that *Warner Hart* may release the Estate so devised to him as, *aforesaid*.

This being the Case, the Court declared, that the said Bond was unduly obtained, and ought to secure no more than what the Testator *Hart* had actually laid out in recovering the said Estate, which the Master is to examine and certify, and to make reasonable Allowances for his Care, &c. deducting the Profits received by the said Testator *Hart*, or the Defendants, or otherwise; and on the Plaintiff's Payment of what shall appear to be due, (if any Thing) 'tis decreed, that the said *Warner Hart* shall

shall convey all his Right to the Premises to the Plaintiff, discharged of all Incumbrances, &c. and shall deliver up the said Bond, &c.

Christopher Woodhouse, John Feild, *and several other Creditors of Sir Richard Combes, Plaintiffs.*

William Cotton, *Esq;* Richard Combes, *Esq;* *and others the Heir and Trustees of the said Sir Richard Combes, Defendants.*

The personal Estate of the Debtor, and some of the Goods taken in Execution, shall be brought into the personal Estate, and to go in Discharge of his Debts, SIR *Charles Combes* being indebted to the Plaintiffs and others in the Sums mentioned in the Bill, and seised in Fee of Lands therein mentioned, did, by his Deed dated in *April 1675*, demise the same to his Trustees the Defendants for 1000 Years, in Trust, that by Mortgage or Sale thereof they might raise Money to pay his Debts mentioned in a Schedule to the said Deed annexed, the Surplus, after Debts paid, to be to him and his Assigns, and the said Trustees to reconvey unto him or them what should remain unfold after Debts paid.

The Trustees entered on the Premises, and possessed themselves of the personal Estate, but refused to pay the Creditors; pretending, that after the said Demise, Sir *Richard* conveyed the Inheritance to them, so that the Term of 1000 Years was merged; and that by this second Deed other Trusts were declared for some other Creditors, and Debts not mentioned in the former Schedule, which the Plaintiffs insist is a Breach of the former Trust; therefore they have exhibited this Bill, that the Trustees may sell and account for the Profits since the said Deed of Trust, and for so much of the personal Estate which came to their Hands; and that the Plaintiffs may be paid their respective Debts with Interest.

The Defendants confess the Deed of Trust in *April 1675*, but that at the Sealing and Delivery thereof Sir *Richard* declared he owed no more than what was comprised in the said Schedule, excepting only some Debts which were secured on his Copyhold Estate.

That the Defendants, soon after the Execution of that Deed of Trust, took up several Sums at Interest, set forth in an Account annexed to their Answer, and afterwards discovered several other Debts owing by Sir *Richard*, and not mentioned in the said Schedule, and that the Freehold Estate was intailed by his Father; and thereupon Sir *Richard*, soon after the said Deed of Trust, levied a Fine, and declared the Uses thereof, &c. on Purpose to bar the Estate-Tail, and to destroy the said Deed of Trust.

And afterwards the Defendants, by the Direction of Sir *Richard*, prepared another Deed of Trust in *May* next following the Date of the same Deed, by which the Defendants were to stand seised of the Premises, in Trust for the Payment of the Debts in the first Schedule, and other Debts since discovered, which were inserted in another Schedule to this last Deed annexed; but that Sir *Richard* would not execute this Deed, because some Debts mentioned in this Schedule were secured on his Copyhold Lands.

But the Trustees say, that they afterwards made up their Accounts, and delivered the same to Sir *Richard*, who approved thereof by subscribing his Name; and that they finding other Incumbrances to which the Trust-Estate was liable, they cannot procure Purchasers whereby the Plaintiffs may be secured of their Debts; and as to the personal Estate, they deny that they ever received any Part thereof.

At the hearing this Cause, the Plaintiffs by their Counsel insisted, that the Defendants had broke the Trust by their accepting the new Deed of Trust, whereby the former Deed *was merged*, and this without the Consent of the Plaintiffs, or any other the Creditors of Sir *Richard*, for whom they were intrusted; and that the Debts in the first Schedule ought to be paid before the Debts mentioned in the other Schedule.

To which it was answered, that there was an apparent Intention, that all the Debts in both Schedules should be paid, as far as the Estate will go to pay; and that it did not appear the Trustees had done any Thing in Breach of their Trust.

The Court was of Opinion, that the Trustees were not guilty of any Breach of Trust, but decreed them to account for what they raised or received out of the Estate conveyed to them as aforesaid, and therewith pay the Debts mentioned in both Schedules; except such Debts which are secured on the Copyholds, which shall bear their own Burden, and shall be excluded out of the Account, as not being included in the Trust;
and

and the real Incumbrances are to be satisfied according to the due Course and Order of Law ; and the rest of the Schedule-Debts are to be paid in Proportion, as far as the Estate will extend ; the personal Estate to be accounted, and to come in Aid of the real Estate, towards Satisfaction of the said Debts ; and it appearing, that some Goods were taken by the Sheriff in Execution for a Debt due to one *Cowley*, it was decreed that should be brought into the Account of the personal Estate ; and it was ordered, that the Trustees shall be allowed all just and necessary Charges expended by them in the Execution of the said Trust.

F I N I S.

A

T A B L E

O F T H E

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